S. Bij 447

1947

File No. Legal DEPARTMENT A BRANCH

Subject:—

Suit Bijapur.

Civil Suit No. 449 of 1946

1) Shivanappa Jalgondappa Desai ---- Plffs

Versus

1) The Province of Bombay ------ Defts.

For a declaration that the order of the Assistant Collector directing recovery of Rs 401/- from the plaintiffs is illegal and for injunction.

C.A. no. 39 of 1545

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Bijapur Civil Suit No. 449 of 1946.

The plaintiff is a representative watandar Patil of the village on Kotikal (Taluka Badami). In 1940 there was a vacancy in the office of the officiating Patil. The plaintiff nominated one Kallappa as his deputy but as he was not a watandar of the same watan the Assistant Collector appointed one Bhujangappa as the officiator Bhujangappa applied on 1941 for payment of potgi or cash remuneration for his services. The Assistant Collector passed an order under section 23 of the Watan Act, fixing Rs. 40/- per year as potgi allowance according to Wingate Rules and directing recovery from the plaintiff under section 81 of the Watan Act.

Aggrieved by that order the plaintiff has filed this suit. The order is correct and in accordance with the relevant provisions of the Watan Act. There is also a bar of jurisdiction and limitation. Defence of the suit may be sanctioned on the lines of the appended brief

RMM
25/3/47.

ALR RC 25/3
RLA <— 27/3

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× Secy RD 28/3

In the Court of Civil Judge,Senior Division,Bijapur.

Civil Suit No. 449 of 1946.

1. Shivanappa Yalagurdappa Desai
of Wadavadgi. ..... Plaintiff.

Vs.

1. The Province of Bombay .... Defendant.

Herein the Defendant by his written-statement states as under:-

1. The Plff's suit is barred under the third paragraph of clause(a) of Section 4 of the Bombay Revenue Jurisdiction Act, 1876.

2. The Plff's suit for the declaration prayed for by him in respect of the order of the Assistant Collector dated 19-10-42 is barred by time under Art 14 of the Indian Limiation Act.

3. The amounts the refund of which is claimed in this suit were recovered from the Plff as a demand recoverable as arrears of land revenue under section 81 of the Watan Act. The plff's suit for refund of Rs.100/- recovered on 10-2-1943 and of Rs.60/- recovered on 7-12-1944 is barred by time under Art. 16 of the Indian Limiation Act.

4. The Plff is the sole representative watandar Patil of the village of Kotikal which is a Pargana watan Inam village. The deputies nominated by the Sole representative Watandar were appointed by the revenue authorities with due regard to the provisions of section 53 of the Watan Act as the officiating Patils and they were remunerated privately by him.

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5. In 1940 on the expiry of the term of office of the Deputy Kallappa Dodda Irappa, the appointment of another Patil became necessary. In response to the notice issued under section 42 and 43 read with section 53 of the Watan Act the Plff appeared and nominated one Kallappa Dodda-Irappa as his deputy. He was not a member of the family of the representative watan--dar nor descended from the same original watandar as the representative watandar. He was not thus accepted and another candidate Bhujangappa Apparaya who was bahubandha of the Plff was appointed by the Deputy Collector as the deputy. The appointment was legal and was made by duly following the

procedure laid down in the Watan Act. The allegations to the contrary in para 3 of the plaint are not correct.

6. Bhujangappa began to serve as Patil. Kotikal being a Pargana Watan Inam village with no Kadim Inam lands assigned for the remuneration of the officiating Patil it was the duty of the Plff according to the standing orders to provide for the remuneration of Bhujangappa according to scales. The Plff failed to do so. Bhujangappa thus applied to the Assistant Collector on 12-8-1941 praying inter alia that the plff be made to pay him Potigi. The Assistant Collector who was competent to fix the remuneration under section 23 of the Watan Act and to direct its recovery from the Plff under section 81 of the Watan Act ordered an enquiry to be held by the Mamlatdar of Badami. In the enquiry so held the Plff was given notice and also opportunity of being heard and of producing his evidence. ~~Thereafter~~ On receipt of Papers of inquiry and after calling for some Papers the Assistant Collector fixed the annual amount of Potigi at Rs. 40/- on the basis of gross annual revenue and on the basis of population according to Wingate's rules and passed the order dated 19-10-1942. That order is perfectly legal and valid and is binding on the Plff. Plff did not seek for any inquiry by nor notice from or an opportunity to represent his case before the Assistant Collector himself. ~~No inquiry by the Assistant Collector himself was necessary.~~ Plff's allegations in para 3 of the plaint that the order is illegal unauthoristed and ultravires and that there is no law Rule or order under which the Prant Officer could make such an order are all incorrect.

7. The Plff's allegation in para 4 of the plaint that the order of the Collector dismissing his appeal was illegal and without giving the Plff an opportunity of being heard, is not correct. The allegations that the reasons given by the Collector for his order are not legal, just and proper are not correct.

8. The order passed by the Assistant Collector is in no way illegal. It is perfectly legal, valid and binding upon the Plff. The allegations of the Plff in various paras of the plaint to the contrary are not correct. The recovery of the amounts was legal and authorised and the Plff's allegation in para 4 (which

is numbered in the plaint as 4 though it ought to be 5) of the plaint that Rs. 240/- have been illegally and unauthorisedly recovered is not correct.

9. The Plff has no cause of action and his allegation in para 6 of the plaint that the cause of action arose on 19-10-1942 and on the dates on which the amounts were recovered is not correct.

10. The Plff is not entitled to the declaration or injunction or refund of costs of the suit as prayed for by him .

11. The Plff is not entitled to interest. He is not entitled to interest at the rate of 6 % which is too high. He is not entitled to Rs. 30/- as interest.

It is therefore pubmitted that the plff's suit be dismissed with costs.

District Government Pleader,Bijapur.

I, Rao Sahib A.C.Angadi,B.A.LL.B., District Government Pleader Bijapur, do hereby declare that what is stated in paras 1 to 11 above is true on information received and believed to be true. Signed in Bijapur on

District Government Pleader,Bijapur.

Suits :

A Bijapur.

For a declaration that the order of the Assistant Collector directing recovery of Rs. 40 from the plaintiff is illegal and for injunction. 4

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 3276.

Bombay Castle, 3rd April 1947.

Endorsement by the Collector of Bijapur, No. L.A.W. 178, dated the 27th December 1946—Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

B IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 449 of 1946.

Shivanappa Yalgordappa Desai ... ... Plaintiff;

versus

The Province of Bombay ... ... Defendant. B

Endorsement by the Commissioner, Southern Division, No. L.S.T. 336, dated the 4th January 1947—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Bijapur, No. 3275, dated the 3rd April 1947—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original

P. M. LAD,
Secretary to Government.

G. R., No. 3276, L. D., dated the 3rd April 1947.

To

*The Revenue Department,
The Commissioner, Southern Division,
The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1947.

Copy forwarded for information and guidance to

Submitted after issue
2 Lit. No. S. Bijapur/47 (new file)

19/12

A.S. P. 20/12/47

BIJAPUR CIVIL SUIT NO. 449 OF 1946.

Chronological Statement of Facts.

The plaintiff has filed this suit for a declaration that the order of the Assistant Collector dated 19th October 1942 directing recovery from him of Rs. 40 per annum as the *potgi* allowance of the Patil commencing from 31st July 1940 is illegal and *ultra vires*, for an injunction restraining Government from making further recovery from the plaintiff in pursuance of that order and for refund of Rs. 270 already recovered from him, with interest thereon at 6 per cent.

2. The plaintiff is the sole representative Watandar Patil of the Village of Kotikal (Taluka Badami) which is a pargana watan Inam village and holds the right to perform the *patilki* service. In this village there were no Kadim lands assigned for the remuneration of the officiating Patil. The deputies nominated by the sole representative watandar were appointed by Government as the officiating Patils and they were remunerated privately by him.

3. In 1940 on the expiry of the term of office of the then Patil Kallappa Dodda Irrappa, the appointment of another Patil became necessary. It was then the turn of the plaintiff himself to officiate. In response to the notices issued under sections 42 and 43 of the Watan Act, the plaintiff appeared before the Prant Officer and nominated one Kalappa Dodda Irrappa as his deputy. As he did not belong to the family of the representative watandar, he was not accepted and another candidate Bhujangappa Apparaya who was a *bhauband* of the plaintiff was appointed by the Assistant Collector as a deputy for five years.

p. 1 of file I. 4. Bhujangappa served for some time without any remuneration. On 12th August 1941 he applied to the Assistant Collector stating that he was not receiving a *potgi* and no lands were assigned for *patilki* service and therefore the plaintiff should be directed to pay him the amount of *potgi*.

5. Inquiries in the village revealed that the Inamdar was not paying any *potgi* to the officiators and that it was amicably settled between him and the officiators that the latter should enjoy S. No. 55 as remuneration for the *patilki* service (see the statement of the village Kulkarni dated 18th December 1941 at page 17 of file I).

p. 51 do. 6. After some further correspondence, the Assistant Collector in his order dated 19th October 1942, fixed the patil's *potgi* as Rs. 40 per annum according to the Wingat Rules (Phadnis: Watan Act Appendix IV, page 252) and directed that it should be recovered from the plaintiff from 31st July 1940 under Section 81 of the Watan Act.

p. 1 of file II. 7. On 11th March 1943, the plaintiff preferred an
p. 35 do. appeal to the Collector who dismissed it on 13th October 1944.

8. On 22nd October 1945, he gave notice of suit under section 80 of the Civil Procedure Code and on 14th September 1946, he filed the present suit in the Court of the Civil Judge, Senior Division, Bijapur.

Grounds of Defence.

Jurisdiction.—The suit is in effect, clearly a suit to set aside or avoid the Assistant Collector's order dated the 19th October 1942. That order was passed by the Assistant Collector under section 23 of the Bombay Hereditary Offices Act (Watan Act) III of 1874. Under

that section, it is the duty of the Collector to fix the annual emoluments of officiators appointed under the provisions of this Act, and to direct the payment thereof to the officiators for the time being. The powers and duties of the Collector under any law for the time being in force can, under section 10 of the Bombay Land Revenue Code, be exercised or performed by the Assistant or the Deputy Collector so far as regards the Taluka or Talukas in his charge. The Assistant Collector's order was therefore legal and in lawful discharge of his statutory duty under section 23 of the Watan Act. That being so, the Court has no jurisdiction to entertain the suit under the third paragraph of clause (*a*) of section 4 of the Bombay Revenue Jurisdiction Act, 1876. That section bars a suit to set aside or avoid any order under the Watan Act passed by Government or any officer duly authorised in that behalf.

2. *Limitation.*—(*a*) The suit was filed on 14th Septembar 1946, i.e. after the expiration of one year from the date of the Assistant Collector's order which is sought to be set aside in this case. Therefore, in so far as the declaratory relief against the said order is concerned, the suit is time-barred under Article 14 of the Indian Limitation Act. In computing the period of limitation under Article 14 the time spent in prosecuting appeals before the higher revenue authorities cannot be excluded. (Ganesh *v.* Secretary of State I. L. R. 44 Bom. 451) Apart from that the suit is not in time even if limitation is computed from the date of the appellate order.

(*b*) The amount the refund of which is claimed in this suit was recovered from the plaintiff as a demand recoverable as arrears of land revenue under section 81 of the Watan Act. The Plaintiff claims a refund of Rs. 240 recovered from him as under:—

Amount.			Recovered on
Rs.			
100	...	...	10th February 1943.
60	...	...	7th December 1944.
40	...	...	23rd April 1946.
40	...	...	31st July 1946.

Under Article 16 of Limitatien Act suits for refund of such amount must be brought within one year from the date of payment. Therefore in respect of the first two items of Rs. 100 and Rs. 60 the suit is time-barred under Article 16.

3. *Merits.*—The order passed by the Assistant Collecter is correct and in accordance with the relevant provisions of the Watan Act. In 1940 when the office of the village Patil became vacant, the plaintiff nominated one Kallappa Dodda Irrappa as his deputy. As he was not a member of the same Watan family as the watandar he could not be appointed under section 53 of the Watan Act. Hence Bhujangappa who was admittedly a *bhauband* of the plaintiff was appointed by the Assistant Collector under section 52 of the Watan Act. The Assistant Collector was competent to fix his remuneration under section 23 of the Watan Act, and to direct it to be recovered from the plaintiff under section 81. The plaintiff contends that Government had not fixed any remuneration as *potgi* for the officiator that Government did not pay any remuneration although the Pali Register showed Rs. 12 as cash allowance payable by Government. This is probably the register of lands and allowances maintained under section 67 of the Watan Act. The relevant extract from that register with an English translation attached is

at p. 29 of file I and that extract does not show that a cash allowance of Rs. 12 was payable by Government. It is probably the amount which the Inamdar used to pay privately to the officiating Patil. From an extract from the Peta Kheta (Taluka Form No. XIII) at page 47 of file I it appears that Government was paying only four annas towards the *potgi* of the officiator. That in a Watan Inam village where there were no Kadim Inam lands for the remuneration of the officiator, it was the Inamdars duty to provide for the officiator's remuneration clearly appears from the statement dated 18th December 1941 of the village Kulkarni. According to his statement the officiators enjoyed the income of Survey No. 55 in lieu of *potgi* which the Imamdar was bound to pay. The Kulkarni is himself in receipt of Rs. 72 as *potgi* from the Watandars. The plaintiff's contention is therefore untenable.

p. 17 of file I.

4. It has already been observed that the Assistant Collector's order was under section 23 of the Watan Act, and was therefore legal. If the plaintiff questions the jurisdiction of that officer to pass such an order, it should be pointed out that an Assistant or a Deputy Collector can under section 10 of the Land Revenue Code exercise all the powers and performs all the duties of the Collector under the code or under any other law for the time being in force.

5. If the plaintiff contends that the *potgi* rate of Rs. 40 per year is not correct, the Court's attention should be invited to the Wingate Rules given in Appendix IV at page 252 of Watan Act, by Phadnis (fifth edition). The rate was fixed after taking into consideration the gross annual revenue of the village and the population (*see* rules 4 and 5 of the Wingate Rules and pages 50—51 of file I where the rate of Rs. 40 is worked out).

6. The plaintiff is therefore not entitled to any relief. It should hence be urged that the suit fails and must be dismissed with costs.

Civil Suit No. 449 of 1948.

Judgment.

Suit for a declaration that the order passed by the Prant Officer on 19-10-1942 is ultra-vires and for the recovery of Rs.270/-.

2. The plaint is based on the following allegations:-

(A). The plaintiff is the holder of the paragana watan of the Desgat of Wadwadgi consisting of several entire villages, Chavrat lands, cash allowances etc. and is also the sole representative watandar patil and Kulkarni of several villages in the Bijapur District. The village of Kotkal in Badami takuka forms part of his paragana watan. He is also the sole representative watandar of the patilki service of that village. No watan land, cash allowance or any other property is attached to this Patilki watan.

(b). The plaintiff and before him the S.R. Watandars of this Patilki watan used to appoint a deputy to work as Patil of Kotikal as the R.W.could not personally officiate as Patil. The deputy used to be remunerated privately by the R.W.There was no remuneration fixed as Potgi for the service by Govt. Govt. Did not pay any remuneration to the officiator even though the Pali Register mentions Rs.12/- as cash allowance payable by Government.

(c). In 1940, the Revenue authorities appointed one Bhujangappa Appasaheb, a distant bhauband of the plaintiff, as a deputy on behalf of Government to the Patilki office of Kotikal, illegally without following the procedure laid down in the Watan Act. This Bhujangappa after he began to serve, made an application to the Prant Officer S.D. on 12-8-1941 that he should be paid Potgi as remuneration for his service as patil by recovering it from the plaintiff of the lands attached to the Watan(though they were not such) should be resumed from the plaintiff and handed over to him for enjoyment as remuner-ation for his service. In the inquiry held by the subordinates of the prant officer, it was pointed out that no lands were attached to the office of patil, that the plaintiff the S.R.W. was in no way liable to pay any potgi to the said officiator nor was Govt. entitled to fix and recover any amount as Potgi or other wise from the plaintiff

for payment to the officiator. The learned Prant officerdid not himself make any enquiry whatever in this connection and without giving the plaintiff any notice or opportunity to re--present his case before him, passed an illegal unauthorised and ultra vires order on 19-10-1942 fixing Rs.40/- as the annual potgi to be paid to the officiator and directing the recovery of this amount from the plaintiff, under section 81 of the Watan Act with effect from 31-7-1940. There is no law, rule or order passed under any law under which the present officer could make such an order. The plaintiff became aware of this order of the Prant Officer, only when an amount of Rs.100/- as due for 2½ years under the order was sought to be recovered from him unuer section 81 of the Watan Act. The plaintiff paid Rs.100/- on 10-2-1943 under protest as the revenue authorities threatened to recover the amount by coercive process.

(d). The plaintiff thereafter appealed to the Collector of Bijapur on 11-3-1943 against the order of the Prant Officer but the Collector was pleased to dismiss it illegally without giving the plaintiff an opportunity to be heard, on 13-10-1944. The reasons given by him for his order are neither legal, just for proper.

(e). The plaintiff has had to pay under protest the following sums demanded of him in pursuance of the illegal order of the Prant Officer on the rates mentioned:-

Rs. 60 on 7-12-1944.
" 40 on23-4-1946.
" 40 on 31-7-1946
Rs. 140

So an all Rs.240 have been illegally and unauthorisedly recovered by Government from the plaintifff.

3. The Govt. of Bombay resists the suit on the following grounds:-

(a) The plaintiff's suit is barred under the third paragraph of clause (a) of section 4 of the Bombay Revenue Jurisdiction Act 1876.

(b) The plaintiff's suit for the declaration prayed for by him in respect of the order of the Assistant Collector dated 29th October 1942 is barred by time under Art.14 of the Indian Limitation Act.

(c) The amounts the refund of which is claimed in this suit were recovered from the plaintiff as a demand recoverable as arrears of land r venue under s-ction 81 of the WatanAct.The Plaintiff's suit for refund of Rs.100/- recov red on 10th Februmry 1943 and of Rs.60/- recovered on 7th December 1944 is barred by time under Art. 16 of the Indian Limitation Act.

(d). The plaintiff is the sole representative watandar Patil of the village of Kotikal which is a Paragana watan Inam village. The deputies nominated by the Sole representative Watandar were appointed by the revenue authorities with due regard to the provisions of sectio 53 of the Watan Act as the officiating Patils and they were remunerated privately by him. The allegation in paragraph 2 of the plaint that the Patil Register mentions Rs. 12 as cash allowancex payable by Govt. is not correct.

(e). In 1940 on the expiry of the term of office of the Deputy Kallappa Doda Irappa, the appointment of another Patil became necess-ary. In response to the notice issued under sections 42 and 43 read with section 53 of the Watan Act the plaintiff appeared and nominated one Kallappa Dodda Irappa as his deputy. He was not a member of the family of the representative watandar nor descended from the same original watandar as the reppesentative Watandar. He was not thus accepted and another candidate Bhujangappa Apparaya who was bahuband of plaintiff was appointed by the Deputy Collector as the Deputy,. The appointment was legal and was made by duly following the procedure laid down in the Watan Act. The allegations to the contrary in para 3 of the plaint are not correct.

(f). Bhujangappa began to serve as Patil. Kotikal being a paragana Watan Inam village with no kadim Inam lands assigned for the remuneration of the offciating Patil it was the duty of the plaintiff according to the standing orders to provide for the remuneration of Bhujangappa according to scales. The plaintiff failed to do so.

Bhujangappa thus applied to the Assistant Collector on 12th Augu 1941 praying inter alia that the plaintiff be made to pay Potgi. The Assistant Collector who was competent to fix the remuneratior under section 23 of the Watan Act and to direct its recovery from the plaintiff under section 81 of the Watan Act ordered an enquiry to be held by the Mamlatdar of Badami. In the inquiry so held the plaintiff was given notice and also opportunity of being heared and of producing his evidence. On receipt of papers of inquiry and after calling for some papers the Assistant Collector fixed the annual amount of Potigi at Rs.40 on the basis of gross annual revenue and on the basis of population according to Wingate's rules and passed the order dated 9th October 1942.

4. The following issues were framed by predecessor-in-office.

1 Is the suit barred under the 3rd para of section 4(a) of the Bombay Revenue Jurisdiction Act ? (1876)?

2. Is the suit with respect to the declaration in respect of the A.C's order barred under article 14 limitation Act. ?

3. Is plaintiff's suit for recovery of Rs.100 and Rs.60/- barred by time under Article 16 Limitation Act ?

4. Does plaintiff prove that the order of the A.C. Is illegal and ultra vires. ?

5. Does plaintiff prove that the order of the Collector was illegal and unfair ?

6. Is plaintiff entitled to the declaration, injunction and the recovery of the amount as claimed ?

7. Is plaintifff entitled to interest on the amount recovered from him ? And if so, at what rate?

8. What order

5. My findings are:-

1. No.

2. No.

3. No.

4. Yes

5. Illegal.

6. Yes.

7. Yes at 6%

8. General issue.

Reasons.

6. This is a suit for a declaration that the order passed by the Assistant Collector on 19-10-1942 is in excess of his statutory authority and is therefore a nullity.

7. The order in question was in these terms:-

" The annual Potgi of the Patil according to scale, is Rs.40/- forty only. The Potgi according to this rate for the period commencing from 31-7-1940 should be recovered from the S.R.W. Inamdar of th village as per section 81 of the Watan Act and paid to the Patil

8. The plff against whom the above order was passed then appealed to the Collector and the Collector dismissed his appeal on 31-10-1944 observing as follows:-

" The appellant is the Inamdar and also holds 0-16-0 Patilki right of service of village Kotikal, taluka Badami. The respondent is appointed as Patil on behalf of Govt. on the S.R.W. failing to nominate a fit deputy on his behalf under section 53 of the Watan Act. There are no kadim inam lands assigned towards the remuneration of the Patilki service,. On the representation of the respondent, the Prant Officer passed an order on 19-10-1942 fixing the remuneration of the Patil under section 23 of the Act. The Prant Officer has also ordered its recovery from the appellant Inamdar as he is responsible to pay the remuneration fixed according to the scale. The appellant(Inamdar0 has come in appeal against the said order on the ground that he is not bound to pay the remuneration of the Patil since the respondent has been appointed on behalf of Govt. His contention is untenable since the Inamdar of an entire inam village according to the standing orders is bound to provide for the remuneration of the village officers. In the circumstances, I see no reasenable ground to interefere with the Prant Officer's order dated 19-10-1942.

The appeal is dismissed.".

9. And this is a suit to obtain a declaration that the order in question is illgal. Now section 42 of the Bombay Hereditary offices Act every representative watandar whose duty it is to officiate shall, if a fit and proper person, perform the duties of the hereditary office himself on being so required by the Collector, but may be permitted by the Collector to appoint a deputy. And Section 23 is as follows:-

Subject to the provisions of this Act and of any other law for the time being in force regarding service Inams, Cash allowances and pensions, it shall be the duty of the Collector to fix the annual emoluments of officiators appointed under the provisions of this Act, and to direct the payment thereof to the officiators for the time being.

" It shall be lawful for the Collector for this purpose to assign watan property, or the profits thereof, towards the emolument of officiators.

The existing assignments shall, until altered by competen authority, be taken to have been made under this section.

With the sanction of Government the Collector may, as occasion arises, alter the assignment and may increase or diminish it in value, such increase or diminution being made rateably among the holders in proportion to the profit derived by such holders respectively from the watan

10. Now the first paragraph imposes the duty of fixing the annual emoluments of the officiators on the Collector. The second paragraph empowers him to assign watan property for that purpose. The third paragraph validates and continues former assignments until altered. The fourth paragraph empowers the Collector to alter the existing assignment but he has to obtain the sanction of the Govt. for such alterations. Reading the second and the fourth paragraph together it follows that out of the assigned property the Collector can, or is free, to fix the emoluments of the officiator under the paragraph as he likes.

11. The position here is that the Collector has fixed the

official emoluments of an officiator not out of any existing assigned watan property. It is common ground that no watan property, is assigned. And in the absence of existing assigned watan property, the Collector has directed the amount to be paid by the plff out of his own pocket. To my mind, the Collector has no power under section 23 to recover the emolumnt from the representative watandar Patil personally. If any new part of watan property is required to be assigned, then he has to proceed under the fourth paragraph of the section. The plan devised under section 23 is to assign watan property. No power is given to the Collector to recover it from the representative watandar Patil. The Order in question is, therefore, in excess of the Collector's statutory authority under section 23 of the Bombay Hereditary Offices Act and is a nullity.

12. There is nothing in section 23 of the Bombay Hireditary offices Act which authorises the Collector to pass any such order. The order is, therefore, not an order under the Watan Act and the Revenue Jurisdiction Act is no bar to the suit (37 Bom. 37).

13. The order of the Collector, not being referable to any atatutary provision, or to any rule which has the force of law, is ultra-vires and the plff is entitled to an injunctio Further, Art. 14 of the Limitation Act does not apply inasmuch the plff is suing not to set aside the Collector's order but for relief on the footing that the order was ultra vires(48Bom. 61). Art. 120 is final and residuary . In 16 Bom. 455 it is held that a suit for a declaration that the order of forfeiture under section 153 of the Bombay Land Revenue Code(Act V of1879) is illegal is governed by Art. 120.

14. When an officer of Govt. purports to act under a statutary authority, but in fact acts in excess of that authority his act should be treated as nullity. It is perhaps simpler to say that the act is not an offical act, for that view brings out more clearly the reason why Art. 14 is no

Bar (45 Bom. 920)

15. It is common ground that a sum of Rs.240 was recovered from the plff pursuant to the order in question. The plff is entitled to interest at 6% by way of compensation Since Art. 120 applies the claim is in time.

16. In the result I pass a decree declaring that the order passed by the Assistant Collector on 19-10-1942 is illegal and ultravires and is a nullity. I issue a direction to the deft not to recover the amount mentioned in the order from the plff. The plff to recover from the deft Rs.270 and costs.

28-1-1949. Sd. A.C.Sequeira.
Civil Judge, Senior Division,
Bijapur.

" True Copy "

District Govt.Pleader,
Bijapur.

Decree under Order 20 rule 6,7

DECREE. Exhibit No. 36.

In the Court of the Civil Judge(Sr.Dn.)
Bijapur.

Civil Suit No. 449 of 1946.

Shivappa Malgurdappa Desai, Kshatriya
age 50, Desai of Wadwadgi taluka
Muddebihal District Bijapur. plff.

Vs.

The Province of Bombay deft.

The plaintiff sues that:-

The plaintiff is the holder of the paragana Watan of the Desgat of Wadwadgi consisting of several entire villages Chavrat lands, Cash allowances etc. and is also the sole Representative Watandar Patil and Kulkarni of several villages in the Bijapur District. The village of Kotikal in Badami taluka forms part of his peragana Watan. He is also the sole Representative Watandar of the Patiliki service of that village. No Watan land, cash allowance or any other property is attached to this Patiliki Watan.

2. The plaintiff and before him the S.R.Watandars of this Patiliki Watan used to appoint a deputy to work as Patil of Kotikal as the Representative Watandar could not personally officiate as Patil. The deputy used to be remunarated privately by the R.W. There was no remuneration fixed as Potgi for this service by Government. Government did not pay any remuneration to the officiator even though the Patil register mentions Rs.12/- as cash allowance payable by Government.

3. In 1940, the Revenue authorities appointed one Bhujangappa Appasaheb, a distant bhauband of the plaintiff, as a deppty on behalf of Government to the Patiliki office of Kotikal, illegally without following

the procedure laid down in the Watan Act. This Bhujangappa, after he began to serve, made an application to the Prant Officer, S.D, on 12-8-1941 that he should be paid potgi as remuneration for his service as Patil by recovering it from the plaintiff or the lands attached to the Watan (though they were no such) should be resumed from the plaintiff and handed over to him for enjoyment as remuneration for service. In the inquiry held by the subordinates the Prant officer, it was pointed out that lands were attached to the office of Patil that the plaintiff the S.R.W. was in no way liable to pay any potgi to the said officiator nor was Government entitled to fix and recover any amount as potgi or otherwise from the plaintiff for payment to the officiator. The learned Prant Officer did not himself make any inquiry whatever in this connection and without giving the plaintiff any notice of or opportunity to represent his case before him, passed an order illegal, unauthorised and ultravir s order on 19-10-1942 fixing Rs.40/- as the annual potgi to be paid to the officiator and directing the recovery of this amount from the plaintiff under section 81 of the Watan Act with effect from 31-7-1940. There is no law, rule or order passed under any law under which the Prant Officer could make such an order. The plaintiff became aware of this order of the Prant Officer, only when an amount of Rs. 100/- as due for 2½ years under the order was sought to be recovered from him under section 81 of the Watan Act. The plaintiff paid Rs. 100 on 10-2-1943 under protest as the Revenue authorities threatened to recover the amount by coercive process.

4. The plaintiff thereafter appealed to the Collector of Bijapur on 11-3-1943 against the order of the Prant Officer by the Collector was pleased to dismiss it illegally without giving the plaintiff an opportunity to be heard, on 13-10-1944. The reasonsgiven

by him for his order are neither letal, just ndr proper. The plaintiff has had to pay under protest the following sums demanded of him in pursuance of the illegal order of the Prant officer on the rates mantioned :-

Rs.60/- on 7-12-1944.
" 40/- on 23-4-1946.
" 40/- on 31-7-1946.
" 140/-

So in all Rs.250/- have been illegally and unauthorisedly recovered by Government from the plaintiff.

5. The plaintiff gave the Province of Bombay notice under section 80 of the Civil Procedure Code on 22-10-1945 through the Collector of Bijapur to make amends to the plaintiff by setting aside the order of the Prant officer and refunding the amount recovered from the plaintiff till then with interest at 6% thereon as damages. The Province of Bombay failed to take any action in response to the notice but on the other hand, Rs.80/- more were recovered from the plaintiff as mentioned above. It has therefore become necessary to file this suit. The cause of action for the suit occured on 19-10-42 on which the Prant Officer passed the order and on the dates on which the various amounts were illegally recovered from the plaintiff.

6. The valuation for Court fee is made as follows:-

(a) Declaration Rs.200/-
(b) Injunction ..... " 5/-
(c) Refunding of Rs.240/- with interest(Rs.30). " 270/-
" 475/-

The valuation for jurisdiction and pleader's fees is the same.

8. Prayer :-

(a). It may be declared that the order passed by

and ultravires and hence void and unenforeceable.

(b). An injunction to the defendant not to make any recovery from the plaintiff in pursuance of the said order.

(c). The amount of Rs.270/-(the amounts recovered at6 % with future interest awarded to the plaintiff from the defendant.

(D). Costs.

(e). Any other or further relief to which the plaintiff is found to be entitled.

The suit coming before A.C.Sequeira, Esquire Civil Judge, Sr.Dn., on 28-1-1949, Mr. N.P.Desai pleader for the plaintiff and Mr.K.R.Rao pleader for the Government of Bombay, the Court ordered and decreed as bellow:-

In the result, I pass a decree declaring that the order passed by the Assistant Collector on 19-10-1942 is illegal and ultravires and is a nullity. I issue a direction to the defendant ~~in~~ not to recover ~~from the defendant Rs.270/- and costs.~~ The plaintiff to recover from the defA Rs 270/- and costs.

Bill of costs.

Plaintiff.		Defendant.	
1. Plaint.	Rs. As. P. 45- 0 - 0.	1.	Rs.A P. 0-0-0.
2. Vakalatnam	0- 10 - 0.	2.	0-0-0.
3. For exhs. 11,16,17, 26,	2 - 8 - 0.	3. Exhs. 5,6,7, 12,21,22.	3-12-0.
4. Process Fee.	1 - 0 - 0.	4.	0-0-0.
5. Witness Bhatta.	0- 0 - 0.	5.	0-0-0.
6. For copying.	0 - 0 - 0.	6.	0-0-0.
7. Pleader's fee on Rs.475/-	23 - 12- 0.	7.	23- 12-0.
8. Commissiner's fee.	0 - 0 - 0.	8.	0-0-0.
Rs.	72-14-0.	Rs.	27- 8-0.
Dow4w eiwqllo8ed.-		Costs disallowed.	
1.Plaint.	0 - 0 - 0.	1.	0-0-0.
2.Pleader's fee.	0 -0 - 0.	2.	0-0-0.
3. For Exhs. 14,16,17.	1 -14- 0.	3. Exhs. 5,6,7, 12,21,& 22.	3-12-0.
Rs.	71 -0 -0.	Rs.	23-12-0.

Given under my hand and the seal of the court, this day of 28th January 1949.

Sd. A.C.Sequeira
Judge, Sr.Dn.Bijapur.

Suits.

Bijapur.
For a declaration that the order of the Assistant Collector directing recovery of Rs. 40/- from the plaintiff is illegal and for injunction.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 1817

Bombay Castle, 16th February 1949.

Read Government Resolution, Legal Department, No. 3276, dated the 3rd April 1947.

Letter from the Collector of Bijapur, No.L.A.W.-178, dated th 4th February 1949.- Forwarding letter No. 83 of 1949, dated the 31st January 1949, from the District Government Pleader, Bijapur, together with an uncertified copy of the judgment dated the 28th January 1949, of the Civil Judge, Senior Division, Bijapur, in the case noted in the margin and requesting sanction ~~sanction~~ to the institution of an appeal against the decision of the Civil Judge, Senior Division, Bijapur, dated the 28th January 1949.

In the Court of the Civil Judge (Senior Division), Bijapur.
Civil Suit No. 419 of 1946.
Shivanappa Yalgordappa Desai - Plaintiff.
Vs.
The Province of Bombay - Defendant.

RESOLUTION:- Sanction is accorded to the institution of an appeal in the District Court, Bijapur, against the decision of the Civil Judge, Senior Division, Bijapur, dated the 28th January 1949 on the lines of the brief accompanying Government Resolution, Lega Department, No. 3276, dated the 3rd April 1947.

By order of the Governor of Bombay,

Original R. M. Mehta
R. M. Mehta,
Assistant Secretary to Government.

Submitted for signature
16/2 A.S.

To

The Revenue Department,
The Commissioner, Southern Division,
The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief accompanying G.R. Ld no 3276 dt 3/4/47)

Issued 16/2

M.16.2 8 KAM.16.2.49

Suite.

Rs. 20/- from the plaintiff as illegal ex-
tension of 3 Notarisation that the order of the
assistant Collector directing recovery of
Stamp.

Submitted after issue
file in S.By. 4/47

Secy. Castle, January 1949.

Secy. Legal Department,
Memorandum No.

Revn. Government Notification, Legal Department, No. 3276, dated
the 3rd April 1947.

Letter from the Collector of Jaffna, No. M.-179, dated 13
6th February 1949.- Forwarding letter No. 53 of 1949, dated the
3rd January 1949, from
the District Government
Agent, Jaffna, to-
gether with an Accounts-
Stamp Paper No. [illegible].

In the Court of the Civil Judge
(Senior Division), Jaffna.
Civil Suit No. 4[illegible] of 1946.

Vs.

Chinnappha Kandaraja - Plaintiff.

Defendant.

dated the 28th January
1949, of the Civil Judge, Senior Division, Jaffna, in the case
noted in the margin, dismissing accepting Exhibits 15 the Insti-
tution of an appeal against the decision of the Civil Judge, Senior
Division, Jaffna, dated the 28th January 1949.

RECOMMENDED:- Sanction is accorded to the Institution of an
appeal in the District Court, Jaffna, against the decision of the
Civil Judge, Senior Division, Jaffna, dated the 28th January 1949
on the file of the Joint Accountant Government Revaluation, Legal
Department, No. 3276, dated the 3rd April 1947.

By order of the Governor of Ceylon,

R. L. Jerin.

Assistant Secretary to Government.

The Attorney-General,

The Solicitor-General, Southern Division,

The Advocate-General,

The Solicitor of Jaffna,

The District Government Agent, Jaffna with two copies of
the 3rd Amit 1949.

Received on
Registered on
Decided on
D
Duration:-

In the Court of the Assistant Judge

At Bijapur.

R.A.No.39 of 1949 from decree in Civil Suit No.449 of 1946 of the Civil Judge,Senior Dn.,Bijapur. (Shri A.C.Sequeira).

Pleaders.		
Shri K.R.Rao. (D.G.P.)	1. The Provinee of Bombay.	appellant-defendant.
	Vs.	
Shri N.P.Desai.	1. Shivanappa Yelgurdappa Desai	Respondent--plaintiff.

Claim Rs. 475/-

This is an appeal against the judgment and decree of the Civil Judge,Senior Division, Bijapur, in Civil Suit No.449 of 1946. The suit was instituted by the respondent against the Province of Bombay for a declaration that an order passed by the Prant Officer, Bijapur, on 19-10-1943 against him was ultra vires and for the recovery of the amount of Rs.270/- which he had to pay thereunder.The respondent is the holder of the Paragana Watan of Vadavadagi.As a Watandar he is the Patil of the village of Kotikal in Badami taluka. He used to appoint a deputy to work as Patil of that village and u used to remunerate him privately for his work. In 1940, the Revenue Authorities appointed oneBhugangappa, who was a distant Bhauband of the appellant, to deputise for him as Patil for that village. According to the respondent, this order was made without following the procedure laid down under the Watan Act. Thereafter, this deputy approached the Prant Officer,S.D. Bijapur, in 1941 for provision of his remuneration. The Prant Officer fixed Rs.40/- per annum as his remuneration and passed an order accordingly on 19-10-1942.He directed that the respondent should pay this amount with effect from 31-7-1940. The respondent's contention was that this order too was illegal The respondent filed an appeal against the order of the Prant Officer to the Collector, but without giving him an

opportunity to state his case, the Collector dismissed the appeal on 13-10-1944. The appellant thereupon had to pay an amount of Rs.240/- in all in accordance with the order of the Prant Officer He, therefore, sought to recover that amount with interest and sought to get a declaration that the orders passed by the Revenue Authorities in connection with the appointment and remuneration of the deputy were illegal.

2. The appellant, Government of Bombay, resisted the claim on the ground that it was barred under section 4 of the Bombay Revenue Jurisdiction Act and also was barred by Limitation. They contended that the various orders passed by the Revenue Authorities were perfectly legal and were passed after following the proper procedure laid down by the law.Hence, they were binding on the respondent.

3. The learned Civil Judge framed issues as to (1) Whether the suit was barred under section 4 of the Revenue Jurisdiction Act, (2) Whether it was barred by limitation, (3) Whether the orders of the Assistant Collector fixing the remuneration and the order of the Collector in appeal were illegal and ultra vires, and (4) Whether the respondent was entitled to the injunction and refund of the amount as claimed. On hearing the parties, he came to the conclusion that the orders passed by the Assistant Collector and the Collector were illegal and that the respondent was entitled to the declaration claimed and the refund of the amount. He accordingly passed a decree in favour of the respondent declaring the orders of the Prant Officer, dated 19-10-1942, as illegal andordering the appellant to pay back the amount of Rs.270/- with interest.Against this decision, the Province of Bombay have come in appeal.

4. The learned Pleader appearing for the respondent has contended at the outset that the learned Civil Judge did not frame all the necessary issues anddid not take all eidence that was necessary in order to come to a proper conclusion with

regard to the matters, which were brought by the respondentbefore the Court. The only substantial issue framed was with regard to theorder passed by the Prant Officer in 1942 fixing the amount of remuneration and making the respondent liable to pay the amount.The respondent, in fact, had challenged even the first order appointing Bhujangappa as his deputy. No issue was framed with regard to this prayer. The learned Civil Judge has proceed--ed on the basis that this order was not challenged and alsoon the basis that the actual amount of remuneration was also not ~~the-basis-that-the-actual-amount-of-remuneration-was-also-on-the-basis-that-the-actual-amount-of-remuneration-was~~--------- challenged.Infact, the plaint ~~order~~ was based primarily on the allegation that the very first order about the appointment of the deputy was itself illegal.It was, therefore, necessary to frame an issue in regard to that order.In order to appreciate as to whether the order was legal or not, it was necessary to take evidence with regard to how the matter was decided. Similarly, in regard to the second order it was necessary to take evidence as to what was the procedure followed by the Prant Officer when he passed this order.In my opinion, therefore, the trial court erred in not framing all the issues.Mr.Desai, who appears for the respondent, has, therefore, made a grievance that his client has not had a proper trial and that, therefore, the matter must be sent down to the trial court so that proper issues may be gramed and he may be in a position to lead evidence necessary to establish that both the orders werepassed without following the proper procedure laid down by the law. I think that his grievance appears to be genuine.In the interests of justice, therefore, I would set aside the decision of the trial court and remand the entire matter to the said Court with a direction that the necessary issues may be gramed and the suit may be heard on merits.In the circumstances of the case, I would order that the costs of this appeal would be costs in the cause.

Order.

5. The decree of the trial court is set aside and the suit is remanded to the trial Court for framing the necessary issues in the light of my remarks above and for hearing it on its merits. Costs of this appeal will be costs in the cause.

17th April 1951

Sd. V.N.Palekar.
Assistant Judge.

" True Copy "

Dist.Govt.Pleader,Bijapur.

129

Suits :
Bijapur.
For a declaration that the order of the Assistant Collector directing recovery of Rs. 40/- from the plaint is illegal and for injunction.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 7673
Bombay Castle, 15th May 1951.

Read Government Resolution, Legal Department, No. 1879, dated 16th February 1949.

Endorsement from the District Government Pleader, Bijapur,

In the Court of the Civil Judge (Senior Division), Bijapur.	No. 277/1951, dated the 19th April 1951, stating that the appeal noted in the margin was decided by the Assistant Judge, Bijapur, on 17th April 1951, when the following order was passed :-
Civil Suit No. 449 of 1946.	
Shivanappa Yalgordappa. . . . . Plaintiff; vs. The Province of Bombay. . . . . Defendant.	

" The decree of the trial court is set aside and the suit is remanded to the trial Court for framing the necessary issues in the light of my remarks above and for hearing it on its merits. Costs of this appeal will be costs in the cause."

RESOLUTION : The result of the appeal is recorded.

By order of the Governor of Bombay,

R Katarki

original (R.T. Katarki),
Deputy Secretary to Government.

To

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Submitted for Signature
W Delhiya 11/5

hsp/11/5

DS.

Issued
Law
15/5

Submitted after issue.
File in S. Bijapur 4/47
DD Delhi
17/5

A. Sam. 17-5

S. Bijapur 4/47
18/5/37

2920—10,000—6-47—R(s)*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ
ಹುಕುಮುನಾಮೆಯು
(ಆರ್ಡರ ೪೧, ಕಾ. ೩೫).

(ಫಾರ್ಮ ನಂಬರು ೯,
ಪರಿಶಿಷ್ಟ ಗ, ಶೆಡ್ಯೂಲ ೧)

ಹುಕುಮನಾಮೆಯು

ಎಮಾಳ್ಳೂರ ಇಲ್ಲಿಯ ಅಪೀಲ್ಯೆ ಜಜ್ಜ ಕೋರ್ಟನಲ್ಲಿ.

ಮುಕ್ಕಾಮು ಎಮಾಳ್ಳೂರ ಇಲ್ಲಿ. ನಿ॥

ಸಿವಿಲ್ ಅಪೀಲ ನೊಕದಮೆ ನಂಬರು ೨೬ ೧೯೪೪ ನೇ ಸ್ಪೆತಿ

(೧) ಮುಗುಟಂತಿ ಲಿಂಗಪ್ಪಾ — ಅಪೀಲಿಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿ)

ವಿರುದ್ಧ

(೧) ಶಿವನಪ್ಪಾ ಯಲಗುದ್ದಪ್ಪಾ ದೇಸಾಯಿ ಪ್ರೌ ಪ್ರೌ, ವಯ ೫೧, ದಿಗಂ ವ್ಯವಸಾಯ ಉದ್ಯೋ ಮುದ್ದೇಬಿಹಾಳ — ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಅರ್ಜಿದಾರ)

ಎಮಾಳ್ಳೂರ ಇಲ್ಲಿರುವಿ॥ ಶ್ರೀ॥ ಸೆಷನ್ಸ ಸಬ್-ಜಜ್ಜ ಕೋರ್ಟನ ಸನ್ ೧೯೪೨ ನೇ ಇಸವಿಯ ಅನೆಲ್ ನಂಬರು ೪೪ ನೇದರಲ್ಲಿ ತಾರೀಖು ೨೨ ನೇ ಜೂನ ಸನ್ ೧೯೪೨ ನೇ ಇಸವಿಯ ಹುಕುಮು ನಾಮೆಯ—ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಅಪೀಲಾಂಟ — ಇವನು ಹೇಳಿದ ತಾರೀಖಿನ ಹುಕುಮು ಪಾಸು ಆಗಿದೆ—ಮೇಲೆ ಎಮಾಳ್ಳೂರ ಇಲ್ಲಿಯ ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೩ ಇಸವಿ ಮಾರ್ಚ ತಿಂಗಳಿನಲ್ಲಿ ತಾರೀಖಿನ ದಿವಸ ಶ್ರೀ ಎಸ್. ಎಸ್. ಪಾಟೀಲ ಅಪೀಲ್ಯೆ ಜಜ್ಜ ಇವರ ಮುಂದೆ, ಅಪೀಲೆಂಟಿನ ತರ್ಫಿನಿಂದ ಶ್ರೀ॥ ಕೆ. ಆರ್. ಕಾಮತ, ವಕೀಲ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ಶ್ರೀ॥ ಎಸ್. ವಿ. ದೇಸಾಯಿ — ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದ್ದಲ್ಲ—

ಕೆಳ ಕೋರ್ಟಿನ ಜಜ್ಜ ನಾಮೆಯನ್ನು ರದ್ದ ಪಡಿಸಿ ಸುಟ್ಟು ಎಂಬಾದಲ್ಲ ಮಾಡಿದ ತೀರ್ಮಾನಗಳ ಮೇಲಾದ ಅಪೀಲ್ಯೆ ಮುದ್ದೇಗಳನ್ನು ತಳಿಯಲಾಗಿ ಮತ್ತೆ ಕೂಲಂಕಷ ಮೇಲೆ ವಿಚಾರಣೆ ಮಾಡಲಾಗಿ ದಾವೆಯನ್ನು ಕೆಳ ಕೋರ್ಟಿಗೆ ತೆರುಸಿ ಕಳಿಸಿದೆ: ಈ ಅಪೀಲಿನ ಖರ್ಚು ದಾವೆಯ ವಿಚಾರಣೆಯ ಮೇಲೆ ಅವಲಂಬಿಸಿದೆ

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು.			ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು.		
	ರೂ.	ಆ.	ಪೈ		ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	೪೫	-	-	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	-	-	-
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ	-	-	-	೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ	-	-	-
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.... ನೆ" ೭	-	೧೦	-	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	೧	೪	-	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	-	-	-
೫. ೪೭೫೯ ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೩	೧೧	-	೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೩	೧೧	-
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ ಎಕ್ಸ್ಟ್ರಾ....	೧೭	೪	-	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	-	-	-
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ				೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು	-	-	-
				೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	-	-	-
ಒಟ್ಟು....	೭೨	೩	-	ಒಟ್ಟು....	೧೩	೧೧	೦

ಈ ಪೊತ್ತು ತಾರೀಖು ೧೭ ನೇ ತಿಂಗಳು ಎಪ್ರಿಲ್ ಸನ್ ೧೯೫೧ ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತರ್ಜುಮೆ ಮಾಡಿ ನೋಡಿತು; ಸರಿಯಾಗಿ ಅದೆ.

Sd/- B.R. Rohedekar
ಕ್ಲರ್ಕನ.

Sd/- N.N. Patekar
ಅಪೀಲ್ಕೋರ್ಟ ಜಜ್ಜ.
21-4-1951

Sd/- K.K. Rao
ಅಪೀಲೆಂಟ ವಕೀಲ.

Sd/- M.P. Desai
ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವದಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

"True Copy"

Deputy Registrar

Received on 30-9-1946.
Registered on 8-10-1946.
Decided on 28-1-1949.
" " 20-6-1952.

IN THE COURT OF THE CIVIL JUDGE SR.DN.BIJAPUR.

Civil Suit No. 449 of 1946. Ex.35.

Pleaders.

Shri N.P.Desai.
" A.M.Desai.

(1) Shivanappa Yelgurdappa Desai, Kshatriya, age 50, Desai, of Wadwadgi, Taluka Muddebihal District Bijapur. .... Plaintiff.

vs.

Govt.Pleader
Shri A.C.Angadi.

(1) The Province of Bombay. .... Defendant.

Claim Rs 475/-.

.....*.....

JUDGMENT.

17. My learned predecessor's above decision dated 28-1-1949 was reversed by the learned Assistant Judge in Civil Appeal No. 39 of 1949 and the suit was remanded to this Court for framing fresh issues and fresh hearing. Accordingly fresh issues were framed at Ex. 39 and the suit has been heard again. The fresh issues framed are as follows:-

(1) Whether the order made by the Deputy Collector in 1940 appointing Bhujangappa Appasaheb as the Deputy to officiate as Patil was wrong, illegal and ultra vires ?

(2) Whether proper procedure was not followed in making the above order ?

(3) Whether the Assistant Collector's order dated 19-10-1942 making the plaintiff liable to pay remuneration to Bhujangappa Appasaheb at Rs 40/- a year was wrong, illegal and ultra vires ?

(4) Whether the Assistant Collector made the abovesaid order dated 19-10-1942 without himself holding any enquiry, and without giving the plff any opportunity to place his case before him ?

(5) Whether the Collector's order dated 13-10-1944 in appeal was illegal and wrong, and whether he made that order without giving the plff an opportunity of being heard ?

(6) Whether the suit is barred under the third paragraph of Section 4(a) of the Bombay Revenue Jurisdiction Act ?

(7) Whether the relief of declaration prayed for by the plff with regard to the Assistant Collector's order dated the 19th October 1942 is time barred under article 14 of the Indian Limitation Act ?

(8) Whether the suit for refund of the amounts of Rs 100/- and 60/- paid on 10-2-1943 and 7-12-1944 is time-barred under article 16 of the Indian Limitation Act ?

(9) Should the declaration and injunction sought by the plff be granted ?

(10) Is the plff entitled to interest on the amount recovered from him ? If so, at what rate ?

(11) What decree ?

18. My findings on the above issues are :-

(1) No. (2) It was followed.

(3) The order was not ultra vires in so far as it merely determined Bhujangappa's remuneration. He was, however, entitled to a remuneration of Rs 35/- only per year. The order was wrong in so far as it fixed his remuneration at Rs 40/- a year. The order was illegal and ultra vires in so far as it directed recovery of the amount of the said remuneration from the plff under section 81 of the Bombay Hereditary Offices Act.

(4) The Assistant Collector made the order without himself holding any enquiry and without hearing the plff, but on a report received from his subordinates who had held a proper enquiry and had given the plff full opportunity to place his case before them.

(5) The Collector made the order without hearing the plff. The order was not illegal.

(6) So far as the reliefs of declaration and injunction in respect of the ultra vires part of the order which directed recovery of the amount of Bhujangappa's remune-ration from the plff and the relief of refund of the amount are concerned, the suit is not barred.

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(7) The relief as regards the said ultra vires part of the order which directed recovery of the amount of Bhujangappa's remuneration from the plff is not time-barred.

(8) Yes.

(9) Yes, as regards the ultra vires part of the order only

(10) He need not be allowed past interest which is negligible.

(11) As per order below.

Reasons.

19. The plff is the paragana watandar of Wadwadgi. His paragana watan consists of many villages including the village of Kotikal. He happens also to be the sole represen--tative watandar Patil of Kotikal. No watan land is,however, attached to the Patilki watan. He holds the whole village of Kotikal, not as the watandar Patil of that village, but as the paragana watandar of Wadwadgi. The register of village service Watans Ex. 33 shows that a cash allowance of Rs 12/- is payable by Government to the officiating Patil of Kotikal But it seems that the Government has not been paying the same either to the plff or to his deputy since long.

20. The plff has appointed one Irappa Yalgurdappa as his mukhtyar or general attorney to manage all his watan affairs. The plff in his deposition before the Court,Ex.45, says that he has no personal knowledge of the matters in suit and that the said mukhtyar has knowledge of the same. Though he said that the mukhtyar would be examined as his witness in this case, he did not ultimately examine him. See his pursis Ex. 58. No oral evidence is led on behalf of the Government. See the Govt pleader's pursis Ex. 59. The case has to be decided principally on the documentary evidence on record.

21. Under section 42 of the Bombay Hereditary Offices Act it is the duty of every representative watandar to perform the duties of his hereditary office himself on being

so required by the Collector; but he may be permitted by the Collector to appoint a deputy. It does not appear that the plff, who is the sole representative watandar Patil of Kotikal, ever performed the duties of his said office personally. He was in the habit of appointing a deputy for him to perform the duties of his patilki office. He had one Kallappa Dod-Irappa in his domestic service. He used to maintain the said Kallappa at his own house and might have been paying him some meagre remune--ration for doing domestic service. Till the year 1940 the plff used to appoint the said Kallappa as his deputy to perform the patilki duties. He was not paying Kallappa any special remuneration for performing the patilki duties as his deputy. Under section 53 of the aforesaid Act every deputy has to be a member of the same family to which the representative watandar belongs, or a watandar of the same watan who is descended from the same original watandar as the representative watandar. Kallappa, however, was not a member of the plff's family; nor was he a watandar of the patilki watan descended from the same original watandar as the plff. But till 1940 nobody ever took any objection to Kallappa's appointment as the plff's deputy on that ground.

22. The last appointment made of the aforesaid Kallappa as the plff's deputy to officiate as the Patil of Kotikal was to expire in May 1940. The Assistant Collector then called upon the plff to appointment a fresh deputy for him by the Notice appearing at page 17 of the file Ex. 49. The plff through his aforesaid mukhtyar Irappa Yalgurdappa offered to appoint the aforesaid Kallappa again as his deputy. See the plff's mukhtyar's statement at page 7 of the file Ex.49. This time, however, there was a rival to Kallappa in the person of one Bhujangappa Appasaheb who was a member of the plff's watan family and his bhauband. This Bhujangappa made an application dated 3-5-1940 to the Deputy Collector to be appointed a deputy to officiate as the Patil of Kotikal. See his application at page 6 of the file Ex. 49. The Assistant Collector then informed the plff through the Mamlatdar that he would have to appoint Bhujangappa as his deputy if he was his bhauband; and that if he

(41)

did not do so, Government would appoint Bhujangappa as the deputy under section 49(e) of the Bombay Hereditary Offices Act. See the Assistant Collector's memo dated 6-5-1940 to the Mamlatdar in that respect at page 22 of the file Ex.49. On behalf of the plff his aforesaid mukhtyar Irappa Yalgur--dappa then made the statement Ex. 46 dated 25-6-1940 before the Mamlatdar that though Bhujangappa was the plff's husband, he was not fit to officiate as the Patil; and that, therefore, Kallappa who had been acting as deputy till then should be again appointed as the deputy. Section 49 clause (e) provides that the Collector shall himself appoint a deputy where the representative watandar declines to appoint a person as his deputy in accordance with section 53. The plff having refused to appoint Bhujangappa who was his bhauband as his deputy in accordance with section 53, it became the Collector's duty to appoint a deputy. On 19-7-1940 the Assistant Collector, therefore, made an order appointing Bhujangappa as the deputy to officiate as the Patil of Kotikal for five years. See the order at page 2 of the file Ex. 49. The plff's learned pleader argues that this order contravenes the provisions of section 49 clause (c) which provides that the Collector shall appoint a deputy where the representative Watandar fails to comply with any requisition to serve in person or appoint a deputy under section 42 or 43 within two months from the date thereof. He contends that the plff was not served with any two months' notice under sec. 49 clause (c) before the Assistant Collector made the aforesaid order dated 19-7-1940 appointing Bhujangappa as the Deputy. The contention is, however, not right. As pointed out above, the notice at page 17 of the file Ex. 49 was served on the plff's mukhtyar on 6-4-1940 requiring him to appoint a deputy under section 42 and 43. He having failed to appoint a fit deputy in accordance with section 53 within two months from that date, the assistant Collector made the aforesaid order dated 19-7-1940 appointing Bhujangappa as the deputy. That

order is quite in accordance with both the clau es (c) and (e) of section 49 proper procedure was followed in making that order. It is not shown that the order is wrong. illegal or ultra vires in any respect.

23. Bhujangappa took charge of his office to act as the deputy for the patil of Kotikal on 31-7-1940. See his report at page 3 of the file Ex. 49. He, however, received no remuneration for acting as the deputy either from the plff or from the Govt. He, therefore, made the application Ex. 48 dated 12-8-1941 to the Assistant Collector seeking remuneration. In that application he alleged that the two lands survey Nos. 15 and 55 were Kadim Inam lands attached to the patilki watan, and prayed that the same might be assigned for his remuneration. The allegation that the said two lands were Kadim Inam lands attached to the patilki watan is, however, admittedly false. It was further prayed in his application that the plff should be made personally liable to pay him a cash remuneration. The assistant Collector forwarded that application to the Mamlatdar for enquiry. The Mamlatdar in his turn seems to have forwarded it to the Circle Inspector for enquiry. In the course of the enquiry conducted by the Circle Inspector, the plff made the application Ex. 28 dated 14-1-1942 pointing out that there were no lands attached to the patilki watan of Kotikal, and that he could not be personally liable to pay any remuneration to the officiating deputy saying that he wanted two months' time to make further representations in the matter. When the matter went up again before the Mamlatdar, the plff deputed his mukhtyar Irappa Yelgurdappa to appear before him. Before the Mamlatdar the Mukhtyar made the statement Ex. 56 dated 1-9-1942 pointing out that when the plff appointed Kallappa as the deputy, he remunerated him privately because he was his dependent retained for demestic service; but that the plff was not liable to remunerate any deputy appointed by the Government, as there was no land attached to the patilki watan. Ultimately the Prant Officer made the order Ex. 29 dated 19-10-1942 fixing Bhujangappa's remuneration at Rs 40/- a year, and directing the same to be recovered from the plff under

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section 81 of the Bombay Hereditary Offices Act. It is the validity of this order that is challenged in this suit. I shall come to the question of its validity later on.

24. From the Prant Officer's aforesaid order Ex.29 the plff preferred an appeal to the Collector. Ex. 31 is the memo of that appeal. It appears that on perusal of the appeal memo and the record of the enquiry held by the Prant Officer though his subordinates, the Collector summarily rejected the appeal without hearing the plaintiff. Ex. 32 is the order made by the Collector dismissing the plff's appeal. On behalf of the plff it is urged that the Collector said order is illegal because it was made without hearing him. Section 78 of the Bombay Hereditary Offices Act, however, authorizes the Collector to dismiss an appeal summarily if on perusal of the petition of appeal it appears to him that there is no sufficient ground for questioning the correctness of the decision of his subordinate officer or for interfering with the order appealed against. The order Ex. 32 made by the Collector dismissing the plaintiff's appeal summarily is not, therefore, illegal on the ground that he made it without hearing the plff.

25. While making the aforesaid order Ex. 29 fixing Bhujangappa's remuneration and making the plff liable to pay the same, the Prant Officer did not hold any enquiry personally. As pointed out above, he got the enquiry made by his subordinate officers, namely, the Mamlatdar and the Circle Inspector, and made the order on the basis of the reports received from them. Section 73 clause (1) of the Bombay Hereditary offices act provides that no order under part V assigning remuneration of officiators, shall be passed unless after an investigation recorded in writing and a proper opportunity afforded for the hearing of claims and the production of evidence; and that in each such investigation the Collector or other officer shall record his decision with the reasons therefor in his own hand writing. The

Prant officer made the said order Ex. 29 under paragraph 1 of x section 23 which of course falls under Part V of the Act. Because that order falls under Part V of the Act, and does not comply with the provisions of section 73 clause (1), the plff's learned pleader challenges it as illegal and ultra vires. Section 73 clause (1),however, does not apply to every order made under Part V. It applies only to such orders made under Part V as assign remuneration of officiators. It is under paragraph 2 of section 23 that assignment of watan property or the profits thereof is made towards the emoluments of Officiators. As pointed out above, there is no property attached to the Patilki Watan of Kotikal. By the order Ex. 29 the Assistant Collector did not assign any patilki watan property or the profits of any such property for Bhujangappa's remuneration. He directed that the amount of Bhujangappa's remuneration fixed under paragraph 1 of section 23 should be recovered from the plff personally under Sec. 81. Section 73 clause (1) does not apply to any order made under section 23, paragraph 1, or section 81. I, therefore, find that the Assistant Collector's order Ex. 29 is not illegal or ultra vires on the ground that it does not comply with the provisions of section 73 clause (1).

26. As I have indicated above, the Prant Officer's order Ex. 29 falls into two distinct parts, namely :- (1) fixing Bhujangappa's remuneration at Rs 40/- a year, and (2) directing the amount of the remuneration for the period commencing from 31-7-1940 to be recovered from the plaintiff under section 81 of the Bombay Hereditary offices Act. The plff challenges the validity of this whole order. It would, however, be convenient to consider the question of the validity of each of its said parts separately. I shall do so below.

27. The order Ex. 29 fixing Bhujangappa's remuneration was made under what are called Wingate's Rules which appear at pages 488 to 497 of the Bombay Hereditary Offices Act by H.S.Fadnis (Second Edition,1911). Rule 4 of those Rules provides that the officiating Patil shall receive a remuneration of 3 per cent on the first thousand Rupees of the gross revenue of his village. Rule 10 provides that the percentage due on any

given revenue must be exactly calculated out. The order Ex. 29 shows that the revenue of Kotikal village is Rs 845-11-0. Three per cent of that amount comes to Rs 25/-. It is wrongly calculated to be Rs 30/- in the order Ex. 29. Rule 5 provides that in addition to percentage on the revenue the Patil shall receive a fixed Potgi allowance and contingent allowance on th basis of population. The population of Kotikal village is 919. According to the scale given in rule 5 Bhujangappa was entitled to Rs 10/- for potgi and contingent allowances on the population basis. Under Rules 4,10 and 5 Bhujangappa was, therefore, entitled to a total remuneration of Rs 35/- a year. It was under the first part of the order Ex. 29 that the Assistant Collector fixed Bhujangappa's total remuneration at Rs 40/- a year. To that extent the first part of the order is wrong. The plff, however, contends that the order is not only wrong but illegal and ultra virés. As pointed out above, under the first paragraph of section 23 of the Bombay Hereditary Offices Act the Assistant Collector had the power to fix Bhujangappa's remuneration. The first part of his order Ex. 29 fixing Bhujangappa's remuneration at Rs 40/- a year is not, therefore, ultra vires though it is wrong because Bhujangappa was entitled to a remuneration of Rs 35/- only per year.

28. The main question in this case is whether the plff is liable to pay the remuneration to which Bhujangappa is entitled under the first paragraph of sec. 23 of the Bombay Hereditary Officers Act. Under the second paragraph of that section it is lawful for the Collector or the Assistant Collector to assign watan property or the profits thereof towards the emoluments of officiators. There being no patilki watan property, the Assistant Collector, by his order Ex. 29, did not assign any watan property or the profits of such property towards Bhujangappa's remuneration. By the second part of the said order Ex. 29 the Assistant Collector directed the amount of Bhujangappa's remuneration

to be recovered from the plff personally. It is obvious that that part of the order was not made under the provisions of Section 23. The order Ex. 29 itself does not show under what authority the Asstt-Collector directed the amount of Bhujangappa's remuneration to be recovered from the plff personally. It is sought to be supported on the basis of the Government Resolution No. 686 dated the 20th February 1860, Ex. 34, which says :-

"The proper payment of village officers is part of the survey system which must be maintained in its entirety. In a wholly alienated village the inamdar must, therefore, provide for the remuneration of the village officers according to scacle, as he receives the whole of the revenue derived f om the village".

As stated above, the plff is not only the watandar Patil of Kotikal, but the paragana Inamdar of Wadwadgi. As the paragana inamdar he holds the entire village of Kotikal and receivesx the whole of its revenue. As the watandar Patil of Kotikal he holds no land and receives no revenue from any lan. or village. The learned Govt pleader argues that on the basis of the above Govt.Resolution, the plff, as the paragana inamdar of Wadwadgi, is liable to provide for the remuneration of the officiating patil of Kotikal. It is not, however, shown under the provisions of which law the government made the above resolution. Unless the Govt resolution is made in accordance with any law in force, it would not be legal or of any effect. On behalf of the plff his learned pleader challenged the Govt resolution as illegal and ultra vires. He relies on rule 19 of the aforesaid Wingate's rules and contends that the plff cannot be made personally liable for Bhujangappa's remuneration. The said Rule 19 is as follows:-

"The whole of the land emoluments, valued according to rule 1, will be first assessed for the remuneration of the officiator; if these do not suffice the cash allowances hitherto paid from the treasury will be next taken, any balance required being made up from the treasury".

There being no watan land attached to the patilki watan of Kotikal, there are no "land emolumants" within the meaning of Rule 19. The Register of Watan Lands and cash allowances Ex. 33 shows that a cash allowance of Rs 12/- is payable by

Govt to the officiating patil of Kotikal. I have, however, pointed out above that the Government, in practice, does not pay the same. The plff's learned pleader urges that this cash allowances of Rs 12/- should be utilized to pay Bhujangappa's remuneration in the first instance, and that the balance required to make up his remuneration should be paid out from the Government treasury under Rule 19 of Wingate's Rules. There seems to be much force in his argument. In the plff's cross-examination it is taken out that he used to remunerate the person whom he used to appoint as his deputy. As I have pointed out above, he used to appoint his own dependent Kallappa as his deputy formerly; and he used to feed and remunerate Kallappa privately because he was rendering him domestic service and not because he officiated as Patil as his deputy. In the statement E . 57 which the plff's mukhtyar made before the Mamlatdar, he stated that the plff used to pay Kallappa an annual remuneration of Rs 12/-. The plff's view regarding his liability to pay the deputy's remuneration is, however, expressed in the mukhtyar's another statement E . 56 which is already referred to above. In the statement Ex. 56 the mukhtyar made it clear that the plff was under no legal obligation to pay any remuneration to the deputy appointed by the Government: After all, the Assistant Collector's order Ex. 29, in so far as it directs the amount of Bhujangappa's remuneration to be recovered from the plff personally, rests for its validity on the aforesaid Govt. resolution No. 686 dated the 20th February 1860, Ex.34. Unless it is shown that it was within the Govt's power to make the resolution and that it is not ultra vires, the direction made in the order Ex. 29 to recover the amount of Bhujangappa's remuneration from the plff personally would be illegal and void. It is not shown that the Govt had power and authority to make the said resolution Ex. 34. I, therefore, think that the second part of the order Ex. 29 directing recovery of the amount of Bhujangappa's remuneration

from the plff personally is ultra vires and void.

29. For the Govt it is urged that this suit is barred by under the third paragrapgh of sec. 4(a) of the Bombay Revenue Jurisdiction Act which provides that no civil Court shall exercise jurisdiction as to any :

> suits to set aside or avoid any order under the same act (Bom.Act No. III of 1874) or any other law relating to the same subject for the time being in force passed by the Provincial Govt or any officer duly authorized in that behalf.

This is no doubt a suit to set aside and avoid the order Ex. 29 passed by the Asstt.Collector. I have pointed out above that its first part fixing Bhujangappa's remuneration at Rs 40/- a year is made in accordance with section 23 of the Bombay Hereditary Offices Act (Act No. III of 1874). It is, therefore, quite legal and valid. This Court can have, therefore, no jurisdiction to entertain the suit so far as the said first part of the order is concerned. I have also pointed out above that the second part of the order Ex. 29 directing recovery of the amount of Bhujangappa's remuneration from the plff personally, is not made in accordance with sec. 23 or any other provision of the Bombay Hereditary offices Act, or ny other law relating to the same subject. That part of the order is ultra vires and void, as it is based on Govt. resolution No. 686 dated the 20th February 1860 Ex. 34, which is itself ultra vires. Where the order challenged is ultra vires, it does not require to be set aside at al. In so far as the said second part of the order Ex. 29 directing recovery of the amount of Bhujangappa's remuneration from the plff is concerned, this suit is not, therefore, barred under sec. 4 clause (a) of the Bombay Revenue Jursidiction Act. See "Maganchand v. Vithalrav" (I.L.R. 37 Bombay 37).

30. It is contended on behalf of the Govt that this suit is timebarred under aritcle 14 of the Indian Limitation Act. For a suit to set aside any act or order of an officer of Govt in his official capacity, that article prescribes a limitation period of one year from the date of the act or order. The Assistant Collector's order Ex. 29 which is challenged in this suit is dated 19-10-1942. This

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suit was not brought withinone year from the date of that order. The plff's learned pleader argues that article 14 has no application where the order challenged is ultra vires and void. In support of his argument he relies on "Patdays v. The Secretary of State for India" (I.L.R.48 Bombay 61). The second part of the order Ex. 29 directing recovery of the amount of Bhujangappa's remuneration from the plff personally is ultra vires and void. It is not necessary to set aside that part of the order. This is a suit to seek relief on the footing that that part of the order is ultra vires. So far as the reliefs of declaration and injunction relating to that part of the order are concerned, this suit is not governed by article 14, but by article 120 of the Indian Limitation Act. To the said extent this suit is not, therefore, time barred.

31. In pursuance of the Asstt.Collector's aforesaid illegal and void order Ex. 29, four amounts were recovered from the plff according to the law relating to the recovery of land revenue under sec.81 of the Bombay Hereditary Offices Act, as follows:-

(1) Rs 100/- on 10-2-1943,
(2) Rs 60/- on 7-12-1944,
(3) Rs 40/- on 23-4-1946, and
(4) Rs 40/- on 31-7-1946.

In the plaint it is stated that the plff paid all the above four amounts under protest as the revenue authorities threatened to recover the same by coercive process. This suit was brought on 30-9-1946. It will appear that the first two of the above four amounts were paid by the plff more than a year before the institution of the suit. For suits against Govt to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of demands recoverable as arrears of revenue, arti-cle 16 of the Indian limitation Act prescribes a period of one year from time when the payment is made. For the Govt it is contentended that the claim in this suit to recover

the first two of the above four amounts is time barred under that article. The contention seems to be sound. I find that the claim for refund of the amounts of Rs 100/- and Rs 60/- paid by the plff on 10-2-1943 and 7-12-1944 under protest is time barred under article 16. The plff is therefore entitled to refund of only the other two amounts of Rs 40/- each paid by him on 23-4-1946 and 31-7-1946 respectively.

32. The plff claims interest at six per cent per annum on the amounts illegally recovered by Govt from him. It is not shown under what provision of law he is entitled to interest on those amounts. Even if interest is allowed to him on the aforesaid two sums of Rs 40/- each paid by him on 23-4-1946 and 31-7-1946 respectively, the amount due for interest thereon till the date of this suit would be negligible. I shall allow him no interest till the institution of the suit.

Order.

33. It is declared that the direction contained in the Assistant Collector's order Ex. 29 dated 19-10-1942 to recover the amount of the Potgi or remuneration payable to the officiating deputy of the Patil from the plff under sec. 81 of the Bombay Hereditary Officers Act is ultra vires and void

The deft and its officers and servants are hereby restrained from recovering any amount from the plff under the aofresaid direction contained in the Asstt.Collector's order Ex. 29.

The deft to pay the plff Rs 80/- with interest thereon at 4 per cent per annum from the date of the suit till satisfaction.

The deft to pay the plff proportionate costs of the suit and bear his own.

Sd/- M.M.Nadakarni.
Civil Judge(Sr.Dn.)

20th June 1952.

True copy.

Dist.Govt.Pleader,Bijapur.

Legal Deptt.

The question in this case is whether an appeal may be filed against the decision of the Civil Judge (S.D.) in suit No.449-1946 of Bijapur by which it was held that the order passed by the Assistant Collector for recovering the remuneration of the Officiating Deputy of the Revenue Patil, from the Inamdar of the village, was illegal and ultra vires and therefore not enforceable.

The plaintiff Shivnappa is the Paragana Watandar of the village Kotikal in Bijapur District. He is also the sole representative Watandar Patil of that village. Up to 1940 he used to appoint one of his domestic servants as his deputy for doing work as Patil. In 1940 the term of the deputy came to an end and a new appointment had to be made. This time the Govt. insisted that the plaintiff should appoint some Bhauband as his Deputy as required by law. He refused to do so. The Government therefore appointed one Bhujangappa as the Deputy under sect.49(e) of the Watan Act. The Deputy took charge of his work on 31.7.1940. On 12.8.1941 he applied to the Asstt. Collector for making provision for his remuneration. No land had been assigned for the remuneration of the Patil or his Deputy. The plaintiff refused to make any payment to the person appointed as his deputy against his will. The Prant Officer made an Inquiry and passed an order on 19.10.42 fixing the remuneration of the Deputy at Rs.40/- per year under section 23 of the Watan Act, and directing under section 81 of the same Act that the amount due for remuneration should be recovered from the plaintiff as he was the Inamdar of the alienated village of Kotikal. The plaintiff had challenged the validity of this order in this suit. He also claimed a refund of the amount already recovered from him.

It was urged for the Govt. that the order passed under section 23 of the Watan Act fixing the remuneratio/

was proper as also the order for recovery of the amount from the Inamdar under section 81 of the Act. The Court held that the Prant Officer had the authority to fix the remuneration of the Deputy under section 23 of the Watan Act. But the Court found that the remuneration should have been fixed at Rs.35 per year under the Wingate Rules which were applicable to the case. The Court further held that the Prant Officer acted without Jurisdiction when he ordered that the amount due for remuneration should be recovered from the Inamdar. Section 81 of the Act did not authorise such recovery from a particular party. That section only laid down that all amounts due for remuneration may be recovered like arrears of Land Revenue. There was no Law under which the Government could hold the Inamdar of an alienated village liable for the remuneration of the Patil. The Court therefore held that the order directing recovery of the amount from the Inamdar was bad and ultra vires. The Court ordered refund of the amount already recovered, so far as the claim was within limitation.

Two points arise in this case for consideration. The first is whether the finding that the remuneration was wrongly fixed at Rs.40 per year, is correct. The second is whether the view of the Court that the recovery of the remuneration of the Patil cannot be ordered to be made from the Inamdar is correct.

As regards the first point the view taken by the Court does not seem to be correct. The Court made the calculation of remuneration on the basis of the Wingate Rules as originally framed. But these Rules have been modified by the orders of the Govt. from time to time. The orders in force in 1942 are contained at page 494 of the Bombay Survey and Settlement Manual Vol. II. The Patil will be entitled to Rs.25 at the rate of 3% on the gross income of the village, plus Rs.10 on the basis of population of the village, plus Rs.10 for contingent and Chowdi

allowance. Thus the Patil's remuneration could have been fixed at Rs.45/- per year. But it has been fixed at only Rs.40 per year. The view of the Court that the proper amount was Rs.35 per year is not therefore correct.

As regards the second point the view of the Court that the remuneration cannot be recovered from the Inamdar seems to be open to doubt. The Govt. had consistently held from the year 1860 that in an alienated village the remuneration of the village officers must come from the Inamdar who receives the whole of the income of the village. The resolution of 1860 authorising the Revenue Officers to recover such remuneration from the Inamdar was cited before the Court. But the Court held that these orders were themselves ultra vires as there was no law enabling the Govt. to hold the Inamdar liable in such a case.

It seems to be true that there is no specific law enabling the Govt. to recover the remunderation of village officers from the Indamdar in the case of wholly alienated villages. But the matter can be urged on general principles. Village Officers are an essential part of the village administration. These officers help in the collection of the revenue and hence their remuneration ought to come from that revenue. If the revenue is wholly taken by an Inamdar, as is the case in an wholly alienated village, the remuneration of the village officers must come from him, at least to the extent of the revenue received by him. This is especially so in cases where no watan lands are set apart for the remuneration of the village officer, as in the present case.

The District Govt. Pleader and the Collector have both expressed the view that an appeal may be filed in this case as a question of principle is involved and

it has considerable importance in the Revenue Administration of Inam villages.

An appeal may be therefore filed in this case in the District Court, Bijapur.

SRK
8/7

R.L.A. 8/7

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
10 JUL 1952

Secy R.D. 8/7

No. 11360/9
9-7-1952.

12.7.52

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY

7/8/1952

C.P.C. Sections 2, Appendix B, Rule 30

ಮಾದರಿ ಪ್ರತಿಜ್ಞಾ.
ಮು ಸಿ ಮುನ್ಸಿ ಕಾ ಕಿ
(ಸ ಪ್ರ ಸಾ ಸ ಪ್ರ)

(ಫಾರಂ ನಂಬರು ೨೦ ಕ್ಕೆ ನೋಡಿರಿ)

ಮುಳುಮೊನಾಮೆ

ತ್ಯಾಗಿನ ದೇವಿಯವರು - ಅಕ್ಷ ಕುಂಬಿಯಾರ್ತ

" ಯಾಕ್ಕಾಮು ತ್ಯಾಗಿನ ಅಕ್ಷ

ದಾವಾ ಮುಂಚಿನ ನಂಬರು ೪೬೫ - ೧೯೧೫ನೇ ಸಾಲಿನದ್ದು

ಗಂಡ ತಾಯಿಯವರಿಗೆ ಮತ್ತು ಗಂಡನಿಗೆ ಮಕ್ಕಳಿಲ್ಲದ್ದಿರುವುದರಿಂದ ಮತ್ತು ಗಂಡನ ಆಸ್ತಿಯಲ್ಲಿ ಹಕ್ಕು ಸಂಪಾದಿಸ

ಮತ್ತು ಈ ಪ್ರಕರಣದ ಅಂತಿಮ ತೀರ್ಪು ಬರುವ ತನಕ ಅಥವಾ ಮೇಲಿನ ಆದೇಶ ಹೊರಡಿಸುವ ತನಕ

ಕೋರ್ಟ್ ಫೀ ಚಾರ್ಜಸ್ ಅನ್ನು ಕೊಡುವ ತಾರೀಖಿನ ವರೆಗೆ ಆಗುವ ಖರ್ಚಿನ ಮೇಲಿನ ಬಡ್ಡಿ ಹಾಗೂ ವೆಚ್ಚದ ಬಗ್ಗೆ

ವಜ್ಜದ ಯಾದಿಯು

ವಾದಿಗೆ ಆದ ವೆಚ್ಚ	ರೂ.	ಆ.	ಪೈ	ಪ್ರತಿವಾದಿಗೆ ಆದ ವೆಚ್ಚ	ರೂ.	ಆ.	ಪೈ
೧. ಅಸಲರ್ಜಿಗೆ ಸ್ಟಾಂಪು	೪೫	೨	-	೧. ವಜಾಬಾಕಿಯ ಅಥವಾ ವಿರುದ್ಧ ದಾವೆಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು.			
೨. ಮುಖ್ಯತ್ಯಾರನಾಮೆಗೆ ಸದರ		೧೦	-	೨. ಮುಖತ್ಯಾರನಾಮೆಗೆ ಸದರ			
೩. ದಾಖಲಾದ ಕಾಗದ(ನಿಶಾನಿ) ಗಳಿಗೆ ಸದರ				೩. ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳಿಗೆ ಸದರ	೨೯	೦	-
ಒಟ್ಟು ಮುಂದಿನ ಪಾನಿನ ಮೇಲೆ ಕೊಟ್ಟದ್ದು.	೬	೪	-	ಒಟ್ಟು ಮುಂದಿನ ಪಾನಿನ ಮೇಲೆ ಕೊಟ್ಟಿದ್ದು.			
೪. ಸಾಕ್ಷೀದಾರರ ಹೊಟ್ಟೀವೆಚ್ಚ				೪. ಸಾಕ್ಷೀದಾರರ ಹೊಟ್ಟೀವೆಚ್ಚ			
೫. ದಾವೆಯ ರಕಮಿನ ಮೇಲೆ ಪ್ಲೀಡರನ ಫೀ	೨೩	೧೭	-	೫. ಪ್ಲೀಡರನ ಫೀ			
ವಿರುದ್ಧ ದಾವೆಯ ಮೇಲೆ ಪ್ಲೀಡರನ ಫೀ				ವಿರುದ್ಧ ದಾವೆಯ ಮೇಲೆ ಪ್ಲೀಡರನ ಫೀ	೨೩	೦	-
೬. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ	೧	೦	-	೬. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ	೨	೦	-
೭. ಕಮಿಶನರನ ಫೀ				೭. ಕಮಿಶನರನ ಫೀ	೨	೦	-
೮. ಧಾಷಾಂತರದ ಫೀ				೮. ಧಾಷಾಂತರದ ಫೀ			
೯. ನಕಲು ಮಾಡುವ ಬಗ್ಗೆ ಫೀ	೩	೫	-	೯. ನಕಲು ಮಾಡುವ ಬಗ್ಗೆ ಫೀ	೧	೫	-
೧೦. ತಹಕೂಬಿಗಳ ಬಗ್ಗೆ ಕೊಟ್ಟದ್ದು				೧೦. ತಹಕೂಬಿಗಳ ಬಗ್ಗೆ ಕೊಟ್ಟದ್ದು			
೧೧. ವಾರಸದಾರರನ್ನು ಬದಲಾಯಿಸುವ ಬಗ್ಗೆ ಮಾಡಿಕೊಳ್ಳ ಅರ್ಜಿಯ ಮೇಲೆ ಸ್ಟಾಂಪು.							
ಒಟ್ಟು	೫೦	೧೨	-	ಒಟ್ಟು	೩೪	೦	-
ಸಾಮಂಜೂರಾದ ಖರ್ಚು				ಸಾಮಂಜೂರಾದ ಖರ್ಚು			
ಅಸಲರ್ಜಿಯ ಮೇಲೆ	೩೭	೧೦	-	ವಿರುದ್ಧ ದಾವೆಯ ಮೇಲೆ			
ಪ್ಲೀಡರನ ಫೀಯ ಮೇಲೆ	೮	೦	-	ಪ್ಲೀಡರನ ಫೀಯ ಮೇಲೆ			
ಪ್ರೊಸೆಸ್ಸುಗಳ ಮೇಲೆ				ಪ್ರೊಸೆಸ್ಸುಗಳ ಮೇಲೆ			
ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳ ಮೇಲೆ (ಮುಂದೆ ನೋಡಿರಿ) ೧೧, ೧೨, ೧೬, ೧೭, ೨೬, ೪೧, ೪೨, ೫೪, ೫೫, ೬೦.	೬	೪೯	-	ದಾಖಲಾದ ಕಾಗದ (ನಿಶಾನಿ) ಗಳ ಮೇಲೆ (ಮುಂದೆ ನೋಡಿರಿ) ೫, ೬, ೭, ೨೧, ೨೨, ೨೩, ೪೭, ೫೨, ೪೩	೪೫	೧೪	
ಬಾಕಿ	೩೨	೧೪	-	ಬಾಕಿ	೧೯	೧೭	-

ಈ ಹೊತ್ತು ಸನ್ ೧೯೫೫ ನೇ ಇಸವಿಯ ಫೆಬ್ರವರಿ ತಿಂಗಳ ೨೦ ನೇ ತಾರೀಖಿನವರೆಗೆ ಪಟ್ಟಿ ಸಹಿ ಮಾಡಿ ಮುಕ್ತ ಕೋರ್ಟಿನ ಮೇಜಿನ ಮೂಲಕ ಕೊಡಲಾಯಿತು.

ಸಹಿ/-
ಜವಾಬುದಾರ

ಸಹಿ/- ಗಣಪತಿ ಎಂ. ಹೆಗಡೆ
ಸಿವಿಲ್ ಜಡ್ಜ್

ಸಹಿ/- ಗಣಪತಿ ಎಂ. ಹೆಗಡೆ
ಸಿವಿಲ್ ಜಡ್ಜ್

ಸಹಿ/- ಎಸ್. ಎಸ್. ಅಂಗಡಿ

* ಹೊಳ್ಳ ಮೇಲಿಟ್ಟಿರುವ ಈ ಖರ್ಚಿಗೆ ಇಂಗಡೆ ಕೊಡುವುದಕ್ಕಿಲ್ಲ ಎಂದು ಕಾಣಿಸಿದ್ದಲ್ಲಿ ಅಥವಾ ಕಾಣಿಸಿದ ಖರ್ಚಿನ ಪ್ರಮಾಣವನ್ನು ಸಮರ್ಥಿಸುವ ದಸ್ತಾವೇಜುಗಳನ್ನು ಪರಿಶೀಲನೆಗಾಗಿ (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಈ ದಸ್ತಾವೇಜುಗಳನ್ನು ನಾಶಮಾಡಲಾಗುವುದು ಎಂಬ ನೋಟೀಸನ್ನು ಕೋರ್ಟಿನ ಮೂಲಕ ಪಕ್ಷಕಾರರಿಗೆ ತಿಳಿಸುವುದಕ್ಕೆ ಆಕ್ಷೇಪವಾಗುವುದಿಲ್ಲ, ಅಂದಿಗೆ ಇದಕ್ಕೆ ಸಾಕ್ಷಿಯಾಗಿ ಸಹಿ ಮಾಡಿದೆವು.

ವಾದಿಯ ಕಕ್ಷಿಯಿಂದ	ಪ್ರತಿವಾದಿ ಪಕ್ಷದಿಂದ
ರೂ. ಆ ಪೈ	
ಮಂಜೂರಾದ ಖರ್ಚು	ಮಂಜೂರಾದ ಖರ್ಚು ...
ದಾಖಲಾದ ಕಾಗದ(ನಿಶಾನಿ) ಗಳ ಸಂಖ್ಯೆ—	ದಾಖಲಾದ ಕಾಗದ(ನಿಶಾನಿ) ಗಳ ಸಂಖ್ಯೆ—
ನಾಮಂಜೂರಾದ ಖರ್ಚು	ನಾಮಂಜೂರಾದ ಖರ್ಚು
ದಾಖಲಾದ ಕಾಗದ(ನಿಶಾನಿ) ಗಳ ಸಂಖ್ಯೆ—	ದಾಖಲಾದ ಕಾಗದ(ನಿಶಾನಿ) ಸಂಖ್ಯೆ—
ಒಟ್ಟು	ಒಟ್ಟು .....

(3)

X. (ಪೂರ್ಣ ಸಹಿ)

55 5'1

ಈ ಪತ್ರವನ್ನು ತಮ್ಮ ಗ್ರಾಮ. ನಾಡ ಕಛೇರಿಗಾಗಿ - ಸಿದ್ಧಪಡಿಸಿ ಈ ಪೊಸ್ಟ್ ಗುಮಾಸ್ತೆಯು ಫಾಲಾಯಿಗೆ
ಮಾಡಿ ಸಾಹಿತಿ ಸಹಿಯನ್ನು ಪಡೆದಿರತಕ್ಕದ್ದು (ತಿ. ನಾ. ಶಿರಸ್ತೆದಾರರು) ಇವರ ಮತ್ತು ಪ್ರತಿವಾದಿಯು ಪೊಲೀಸ್
ಪಿಳ್ಳಿ. ಅ. ಅಂಗಡಿ ಇವರ ಸಮಕ್ಷಮದಲ್ಲಿ ಎಂದಿದ್ದರಿಂದ ಹುಳುಮುಖಾಮೆ ಮಾಡಿದೆ. ಫಿರ್ಯಾದುದಾರನೇನೆಂದರೆ:—

ನಾ ಬಾಯಿ ಹೊಂಡಿಕೊಂಡು ಅಲ್ಲೇ ನಿಂತಿದ್ದೆ. Heard they.
Office Asst- ಕಲವಾಡದವರು ನಮ್ಮ ಪರವಾಗಿ ಮಾತನಾಡಿದರು.
ಕೆಲವು ಮಹಿಳೆಯರು ಸಹ ಅಲ್ಲಿ ಸೇರಿದ್ದರು. ಅವರು ಕೂಡ ನಮ್ಮ ಪರವಾಗಿ ಮಾತನಾಡಿದರು. ಆಗ ಪಿರ್ಯಾದಿಯವರು ಕೆಲವು ಕಾಗದಪತ್ರಗಳನ್ನು ತೋರಿಸಿದರು. ಅವುಗಳಲ್ಲಿ ಕೆಲವು ಪತ್ರಗಳಲ್ಲಿ ಸಹಿ ಇತ್ತು. ಕೆಲವು ಪತ್ರಗಳಲ್ಲಿ ಸಹಿ ಇರಲಿಲ್ಲ. ಅವರು ಆ ಪತ್ರಗಳನ್ನು ನಮಗೆ ತೋರಿಸಿದರು. ಅವುಗಳಲ್ಲಿ ಕೆಲವು ಪತ್ರಗಳಲ್ಲಿ ಸಹಿ ಇತ್ತು. ಕೆಲವು ಪತ್ರಗಳಲ್ಲಿ ಸಹಿ ಇರಲಿಲ್ಲ. ಅವರು ಆ ಪತ್ರಗಳನ್ನು ನಮಗೆ ತೋರಿಸಿದರು. ಸಹಿ ಇರುವ ಪತ್ರಗಳಲ್ಲಿ ಅವರು ಸಹಿ ಮಾಡಿದ್ದರು. ಸಹಿ ಇಲ್ಲದ ಪತ್ರಗಳಲ್ಲಿ ಅವರು ಸಹಿ ಮಾಡಿ

ಪ್ರತಿಗಳಿಗೆ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಿ ಅಭ್ಯರ್ಥಿಗಳು ಪ್ರವೇಶ ಪತ್ರವನ್ನು ಪಡೆದುಕೊಳ್ಳಬೇಕು. ಈ ಪ್ರವೇಶ ಪತ್ರಗಳಲ್ಲಿ ಅಭ್ಯರ್ಥಿಗಳ ಭಾವಚಿತ್ರವನ್ನು ಅಂಟಿಸಿ ಅವರ ಸಹಿಯನ್ನು ಪಡೆದು ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರು ಪರೀಕ್ಷೆಗೆ ಹಾಜರಾಗಲು ಅನುಮತಿ ನೀಡಬೇಕು. ಈ ಪ್ರವೇಶ ಪತ್ರಗಳಲ್ಲಿ ಅಭ್ಯರ್ಥಿಗಳು ಪರೀಕ್ಷೆಗೆ ಹಾಜರಾಗಿರುವ ಬಗ್ಗೆ ಮುಖ್ಯಸ್ಥರು ದೃಢೀಕರಿಸಿ ಸಹಿ ಮಾಡಬೇಕು. ಪರೀಕ್ಷೆಗೆ ಹಾಜರಾಗದ ಅಭ್ಯರ್ಥಿಗಳ ಪ್ರವೇಶ ಪತ್ರಗಳನ್ನು ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರು ಪರೀಕ್ಷೆ ಮುಗಿದ ತಕ್ಷಣ ಪರೀಕ್ಷಾ ಕೇಂದ್ರದಲ್ಲಿಯೇ ಹರಿದು ಹಾಕಿ ವಿಲೇವಾರಿ ಮಾಡಬೇಕು. ಪರೀಕ್ಷೆಗೆ ಹಾಜರಾಗಿರುವ ಅಭ್ಯರ್ಥಿಗಳ ಪ್ರವೇಶ ಪತ್ರಗಳನ್ನು ಮಾತ್ರ ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರು ಸಂಗ್ರಹಿಸಿ ಇಟ್ಟುಕೊಳ್ಳಬೇಕು. ಅಭ್ಯರ್ಥಿಗಳ ಪ್ರವೇಶ ಪತ್ರಗಳನ್ನು ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರು ಪರೀಕ್ಷೆ ಮುಗಿದ ತಕ್ಷಣ ಪರೀಕ್ಷಾ ಕೇಂದ್ರದಲ್ಲಿಯೇ ಹರಿದು ಹಾಕಿ ವಿಲೇವಾರಿ ಮಾಡಬೇಕು. ಪರೀಕ್ಷೆಗೆ ಹಾಜರಾಗಿರುವ ಅಭ್ಯರ್ಥಿಗಳ ಪ್ರವೇಶ ಪತ್ರಗಳನ್ನು ಮಾತ್ರ ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರು ಸಂಗ್ರಹಿಸಿ ಇಟ್ಟುಕೊಳ್ಳಬೇಕು.

(ಸ) ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರಿಂದ ಪ್ರವೇಶ ಪತ್ರಗಳನ್ನು ಪಡೆದುಕೊಳ್ಳುವ ಸಲುವಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರಕ್ಕೆ ಹೋಗುವ ಸಿಬ್ಬಂದಿಗಳು ಪರೀಕ್ಷೆಯ ದಿನದಂದು ಬೆಳಿಗ್ಗೆ 9-30 ಗಂಟೆಯೊಳಗೆ ಪರೀಕ್ಷಾ ಕೇಂದ್ರಕ್ಕೆ ಹೋಗಿ ಪ್ರವೇಶ ಪತ್ರಗಳನ್ನು ಪಡೆದುಕೊಂಡು ಬರಬೇಕು. ಪರೀಕ್ಷೆಯು ಪ್ರಾರಂಭವಾಗುವ ಸಮಯಕ್ಕೆ ಸರಿಯಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರಕ್ಕೆ ಹಾಜರಾಗಿರಬೇಕು.

(ಹ) ಪರೀಕ್ಷೆಯು ಪ್ರಾರಂಭವಾಗುವ ಸಮಯಕ್ಕೆ ಸರಿಯಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರಕ್ಕೆ ಹಾಜರಾಗಿರುವ ಅಭ್ಯರ್ಥಿಗಳ ಪ್ರವೇಶ ಪತ್ರಗಳನ್ನು ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರು ಪರಿಶೀಲಿಸಿ ಅಭ್ಯರ್ಥಿಗಳ ಭಾವಚಿತ್ರ ಮತ್ತು ಸಹಿಯನ್ನು ಪಡೆದು ಪರೀಕ್ಷೆಗೆ ಹಾಜರಾಗಲು ಅನುಮತಿ ನೀಡಬೇಕು. ಪರೀಕ್ಷೆಯು ಪ್ರಾರಂಭವಾಗಿ 15-20 ನಿಮಿಷಗಳ ನಂತರ ಪರೀಕ್ಷಾ ಕೇಂದ್ರಕ್ಕೆ ಹಾಜರಾಗುವ ಅಭ್ಯರ್ಥಿಗಳಿಗೆ ಪರೀಕ್ಷೆಗೆ ಹಾಜರಾಗಲು ಅನುಮತಿ ನೀಡಬಾರದು.

(ಗ) ಅಭ್ಯರ್ಥಿಗಳು ಪರೀಕ್ಷೆಗೆ ಹಾಜರಾಗಲು ಪ್ರವೇಶ ಪತ್ರಗಳನ್ನು ಪಡೆಯಲು ಪ್ರಾರಂಭಿಸಿದ ದಿನದಿಂದ ಪರೀಕ್ಷೆಯು ಮುಕ್ತಾಯವಾಗುವವರೆಗೆ ಪ್ರತಿದಿನ ಪರೀಕ್ಷಾ ಕೇಂದ್ರದಲ್ಲಿ ಹಾಜರಿರಬೇಕು.

ಪರೀಕ್ಷಾ ಕೇಂದ್ರ ಮುಖ್ಯಸ್ಥರಿಗೆ ಸಂಭಾವನೆ

ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರಿಗೆ ಪರೀಕ್ಷೆಯ ಪ್ರತಿ ದಿನಕ್ಕೆ ರೂ. 2-ನ್ನು ಸಂಭಾವನೆಯಾಗಿ ನೀಡಲಾಗುವುದು.

ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಸಿಬ್ಬಂದಿಗಳಿಗೆ ಸಂಭಾವನೆ

ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಸಿಬ್ಬಂದಿಗಳಿಗೆ ಪರೀಕ್ಷೆಯ ಪ್ರತಿ ದಿನಕ್ಕೆ ರೂ. 93-ನ್ನು ಸಂಭಾವನೆಯಾಗಿ ನೀಡಲಾಗುವುದು.

ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಸಹಾಯಕರಿಗೆ ಸಂಭಾವನೆ

ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಸಹಾಯಕರಿಗೆ ಪರೀಕ್ಷೆಯ ಪ್ರತಿ ದಿನಕ್ಕೆ ರೂ. 30-ನ್ನು ಸಂಭಾವನೆಯಾಗಿ ನೀಡಲಾಗುವುದು.

ಇತರೆ ಸೂಚನೆಗಳು

(ಅ) ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರು ಪರೀಕ್ಷೆಯ ಪ್ರಾರಂಭಕ್ಕೆ ಒಂದು ಗಂಟೆ ಮುಂಚಿತವಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರಕ್ಕೆ ಹಾಜರಿರಬೇಕು. ಪರೀಕ್ಷೆಯು ಪ್ರಾರಂಭವಾಗುವ ಸಮಯಕ್ಕೆ ಸರಿಯಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಬಾಗಿಲನ್ನು ಮುಚ್ಚಿ ಅಭ್ಯರ್ಥಿಗಳ ಪ್ರವೇಶವನ್ನು ನಿರ್ಬಂಧಿಸಬೇಕು.

(ಆ) ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರು ಪರೀಕ್ಷೆಯ ಪ್ರಾರಂಭಕ್ಕೆ ಒಂದು ಗಂಟೆ ಮುಂಚಿತವಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರಕ್ಕೆ ಹಾಜರಿರಬೇಕು. ಪರೀಕ್ಷೆಯು ಪ್ರಾರಂಭವಾಗುವ ಸಮಯಕ್ಕೆ ಸರಿಯಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಬಾಗಿಲನ್ನು ಮುಚ್ಚಿ ಅಭ್ಯರ್ಥಿಗಳ ಪ್ರವೇಶವನ್ನು ನಿರ್ಬಂಧಿಸಬೇಕು. ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರು ಪರೀಕ್ಷೆಯ ಪ್ರಾರಂಭಕ್ಕೆ ಒಂದು ಗಂಟೆ ಮುಂಚಿತವಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರಕ್ಕೆ ಹಾಜರಿರಬೇಕು. ಪರೀಕ್ಷೆಯು ಪ್ರಾರಂಭವಾಗುವ ಸಮಯಕ್ಕೆ ಸರಿಯಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಬಾಗಿಲನ್ನು ಮುಚ್ಚಿ ಅಭ್ಯರ್ಥಿಗಳ ಪ್ರವೇಶವನ್ನು ನಿರ್ಬಂಧಿಸಬೇಕು.

(ಇ) ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರು ಪರೀಕ್ಷೆಯ ಪ್ರಾರಂಭಕ್ಕೆ ಒಂದು ಗಂಟೆ ಮುಂಚಿತವಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರಕ್ಕೆ ಹಾಜರಿರಬೇಕು. ಪರೀಕ್ಷೆಯು ಪ್ರಾರಂಭವಾಗುವ ಸಮಯಕ್ಕೆ ಸರಿಯಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಬಾಗಿಲನ್ನು ಮುಚ್ಚಿ ಅಭ್ಯರ್ಥಿಗಳ ಪ್ರವೇಶವನ್ನು ನಿರ್ಬಂಧಿಸಬೇಕು. ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಮುಖ್ಯಸ್ಥರು ಪರೀಕ್ಷೆಯ ಪ್ರಾರಂಭಕ್ಕೆ ಒಂದು ಗಂಟೆ ಮುಂಚಿತವಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರಕ್ಕೆ ಹಾಜರಿರಬೇಕು. ಪರೀಕ್ಷೆಯು ಪ್ರಾರಂಭವಾಗುವ ಸಮಯಕ್ಕೆ ಸರಿಯಾಗಿ ಪರೀಕ್ಷಾ ಕೇಂದ್ರದ ಬಾಗಿಲನ್ನು ಮುಚ್ಚಿ ಅಭ್ಯರ್ಥಿಗಳ ಪ್ರವೇಶವನ್ನು ನಿರ್ಬಂಧಿಸಬೇಕು.

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In the Court of the District Judge, Bijapur.

Civil Appeal No. _____ 1952.

(1) The State of Bombay (Province of Bombay). Appellant.

Vs.

(1) Shivanappa Yelgurdappa Desai, Kshatriya, age 57, occupation Desai of Waddawadgi in Muddebihal Taluka .... Respondents.

Claim Rs 285/- for the purpose of jurisdiction, Court fees and pleader's fee.

Herein the appellant states as under:-

The plaintiff-respondent filed Civil Suit No. 449 of 1946 in the Court of the Civil Judge(Sr.Dn.) at Bijapur against the defendant-appellant. The learned Civil Judge, (Sr.Dn.) passed a decree in the said suit on 20-6-1952 awarding declaration and injunction as prayed for by the plaintiff and also awarding Rs 80/- and proportionate costs to the plaintiff ~~ad~~ and directing the defendant-appellant to bear his own costs. Being aggrieved by the said decree and Judgment the appellant hereby prefers this appeal, inter alia, on the following grounds :-

(1) The lower Court ought to have held that the order of the Prant Officer dated 19-10-1942 was legal and valid and that that order was not illegal and ultra vires in so far as it directs recovery of the amount of the said remuneration from the plff under Sec. 81 of the Bombay Hereditory Office Act.

(2) The findings of the lower Court against the appellant on issues Nos. 3,6,7,9 and 11 are not correct and the lower Court ought to have given findings in favour of the appellant on all these issues.

(3) The finding of the lower Court that the Collector made the order without hearing plff is not correct.

(4) The lower Court ought to have held that the order in question making the plff liable to pay the remunera-tion to Bhujangappa was legal and valid at least to the extent of Rs 35/- a year. The lower Court ought

to have held that it is the duty of the plff (who is the Paragana Watandar of the village) according to the standing order to provide for the remuneration of Bhujangappa Patil according to scales.

5) The lower Court ought to have held that it was within the power of the Prant Officer to direct the payment of emoluments fixed, by the plff, and to direct the recovery of the same from the plff under Sec. 81 of the Watan Act.

6) The observation of the lower Court that the Registers of Watan lands and cash allowances shows that cash allowance of Rs 12/- is payable by Government is not correct.

(7) The observations of the lower Court that there appears to be much force in the contention of the plff that Rule 19 of Wingate's Rules would apply to the facts of the case are not correct.

(8) The lower Court ought to have held that the plff being a Paragana Watandar and in addition a represented Watandar Patil was bound to provide for the remuneration of the Deputy appointed under the Watan Act. The lower Court ought to have held that the standing order based on the Government Resolution is valid and binding upon the plaintiff.

(9) The lower Court ought to have held that it is within the power of the Government to make the resolution referred to in the standing order.

(10) The lower Court erred in holding the second part of the order Ex. 29 directing recovery of the amount of Bhujangappa's remuneration from the plff personally is ultra vires and void.

(11) The lower Court ought to have held that the plff's suit is barred under third paragraph of Sec. 4(a) of the Bombay Revenue jurisdiction Act.

(12) The lower Court ought to have held that the relief of declaration prayed for by the plff with regard to the order of the Prant Officer in question is time barred under Article No. 14 of the Indian Limitation Act.

(13) The lower Court ought to have held that the plff is not

entitled to the declaration and injunction and refund of the amount.

(14) The lower Court ought to have dismissed the plff's suit with costs.

(15) The lower Court ought not to have given costs of the plff from the defendant and ought to have awarded costs of the defendant from the plaintiff.

On these grounds among others, it is submitted that this appeal be allowed, that the decree of the lower Court be set aside, and that the plaintiff's suit be ordered to be dismissed with all costs on the respondent throughout.

District Government Pleader,
Bijapur.

Civ. A 42 k.

2719—5,700—11-44—B(a)*

ಅಪೀಲಿನೊಳಗಿನ
ಹುಕುಮುನಾಮೆಯು
(ಆರ್ಡರ ೪೧, ರೂ. ೪೫).

(ಫಾರ್ಮ ನಂಬರು ೯,
ಪರಿಶಿಷ್ಟ ಗ, ವಿಧ್ಯೂ ೧೧)

ಹುಕುಮುನಾಮೆಯು

ಬಿಜಾಪುರ ಇಲ್ಲಿಯ ಅಸಿಸ್ಟೆಂಟ ಜಜ್ಜ-ಕೋರ್ಟನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಬಿಜಾಪುರ ಇಲ್ಲಿ. ನಿಃ

ಅಪೀಲೆಂಟ (ಮೊದಲನೇ).

ರಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ).

ಇಸವಿಯ ಸಂಖ್ಯೆಯ ಇನ್ನೇದರಲ್ಲಿ ತಾರೀಖು ೧೨ನೇ ಮೇ ಸನ್ ೧೯೪೬ನೇ ಇಸವಿಯ ಹುಕುಮು ನಾಮೆಯ ಮೇಲಿ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣಾಗಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಅಪೀಲಿನಲ್ಲಿ ಇವನು

ಸದರಿ ಕೊಂಡಿಪಿಸಿದ ಹುಕುಮು ನಾಮೆಯ ಮೇಲಿ ಇಲ್ಲಿಯ

ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿದುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೬ನೇ ಇಸವಿ ತಿಂಗಳ ೩೧ನೇ ತಾರೀಖಿನ ದಿವಸ ಮುಂದೆ, ಅಪೀಲೆಂಟನ ತರ್ಫೀನಿಂದ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫೀನಿಂದ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣೆಯ ಬಗ್ಗೆ ಬಂದಿದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡಿಯಿದೆ ಅಂತಾ ಆಗಲಿ ಇಲ್ಲಾ ಆಗಲಿ ಹೇಳಿಕೆ ಇಲ್ಲ.

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ	ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟ್ಯಾಂಪು....	೨೨	೧	-	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟ್ಯಾಂಪು....	-	-	-
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ	-	-	-	೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ	೧೨	೧೪	-
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	-	-	-	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.	-	-	-
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	೧	೧೪	-	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣೆ	-	೧೪	-
೫. ೨೫೦೦ ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೫೧	೧	-	೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೫೧	೧	-
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	೩೯	೬	-	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	-	-	-
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೫೧	೧	-	೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟ್ಯಾಂಪು	-	-	-
೮ ಪೇಪರ್ ಬುಕ್ಕಿನ ಕಾಪಿ (Printed copies)	೧೪	-	-	೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೫೧	೧	-
ಒಟ್ಟು....	೩೭೨	೧೪	-	ಒಟ್ಟು....	೩೬೪	-	-

ಈ ಹೊತ್ತು ತಾರೀಖು ೨೧ ತಿಂಗಳು ಜುಲೈ ಸನ್ ೧೯೫೩ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ನೂಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ನೂಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ನೂಡಿ ನೋಡಿತು ಸಮನಾಗಿ ಆಜೆ.

ಸಿ S M Ballawat
ಕಾರಕೂನ.

ಸಿ A C Angadi
ಅಪೀಲೆಂಟ ವಕೀಲ.

ಸಿ D S Kulkarni
ಧಾರವಾಡ ಜಜ್ಜ.
10-8-53
(ಸಹಿ ಇಲ್ಲ)
ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಪೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ನೂಡಿದ ಯಾವನಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳ ಅಪೀಲು ನೂಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾಡ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಆದರೆ ಅವು ನಾಶ ನೂಡುವದರಲ್ಲಿ ಬರುವವು.)]

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Secretary
Company by Sd B R Kulkarni
Secretary.

"ಸಹಿ ಇಲ್ಲ"
ಸಿ M K Deshpande
Clerk to the Court.

S.No. 1660/53

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Ys-Ms-Ds.
Decided on :-31-7-1953. Duration :- 0-0-1.

IN THE COURT OF ASSISTANT JUDGE, AT BIJAPUR.

Civil Appeal No. 213 of 1952 from Decree in Civil Suit No. 449 of 1946 of the Court of the Civil Judge (senior digisin) of Bijapur (Shri M.M.Nadakarni).

P l e a d e r s:-

Srhi A.C.Angadi.

Shri.N.P.Desai.

1. The State of Bombay
(Province of Bombay).. .. .. .. Appellant
(Original-defendant).

Against.

1. Shivanappa Yalgurdappa Desai,
Waddawadgi in Muddebihal Taluka .. Respondent
(Original-plaintiff).

Claim Rs. 285/-.

G r o u n d s - o f - a p p e a l:-

1. The lower Court ought to have held that the order of the Prant officer dated 19-10-1942 was legal and valid and that that order was not illegal and ultra vires in so far as it directs recovery of the amount of the said remuneration from the plaintiff under section 81 of the Bombay Hereditory office Act.

2. The findings of the lower Court against the appellant on issues Nos. 3, 6, 7, 9 and 11 are not correct and the lower Court ought to have given findings in favour of the appellant on all these issues.

3. The finding of the lower Court that the Collector made the order without hearing plaintiff is not correct.

4. The lower Court ought to have held that the order in question making the plaintiff liable to pay the remuneration to Bhujangappa was legal and valid. The lower Court ought to have held that it is the duty of the plaintiff (who is the Paragana Watandar of the village) according to the standing order to provide for the remuneration of Bhujangappa Patil according to scales.

5. That in view of the orders in force which are contained at page 494 of the Bombay Survey and Settlement Manual Volume II, the lower Court ought to have held the order of the Prant Officer in so far as it fixed the remuneration at Rs. 40/- was correct.

6. The lower Court ought to have held that it was within the power of the Prant officer to direct the payment of emoluments fixed, by the plaintiff, and to direct the recovery of the same from the plaintiff under section 81 of the Watan Act.

7. The observation of the lower Court that the Registers of Watan lands and cash allowances shows that cash allowance of Rs. 12/- is payable by Government is not correct.

8. The observations of the lower Court that there appears to be much force in the contention of the plaintiff that Rule 19 of Wingate's Rules would apply to the facts of the case are not correct.

9. The lower Court ought to have held that the plaintiff being a Paragana Watandar and in addition a represented Watandar Patil was bound to provide for the remuneration of the Deputy appointed under the Watan Act. The lower Court ought to have held that the standing order based on the Government Resolution is valid and binding upon the plaintiff.

10. The lower Court ought to have held in view of the fact that the village officers are an essential part of the village administration and help in the collection of the revenue, their remuneration ought to come from that revenue and that in the case of a wholly alienated village as in the present case the remuneration of the village officers must come from the Watandar at least to the extent of the revenue received by him especially in view of the fact that no Watan lands are set apart for the remuneration of the officiating Patil. That on these general principles as well the Court ought to have held that the order in question was perfectly legal and valid.

11. The lower Court erred in holding the second part of the order Ex. 29 directing recovery of the amount of Bhujangappa's remuneration from the plaintiff personally is ultra vires and void.

12. The lower Court ought to have held that the plaintiff's suit is barred under third paragraph of section 4(a) of the Bombay Revenue Jurisdiction Act.

13. The lower Court ought to have held that the relief of declaration prayed for by the plaintiff with regard to the order of the Prant Officer in question is time barred under Article No. 14 of the Indian Limitation Act.

14. The lower Court ought to have held that the plaintiff is not entitled to the declaration and injuncti

injunction and refund of the amount.

15. The lower Court ought to have dismissed the plaintiff's suit with costs.

16. The lower Court ought not to have given costs of the plaintiff from the defendant and ought to have awarded costs of the defendant from the plaintiff.

Cross-objections.

1. The lower Court erred in holding that the respondent's claim for the refund of the amounts of Rs. 100/- and Rs. 60/- recovered from him on 10-2-1943 and 7-12-1944 respectively was barred by time under article No.16 of the I. L. Act.

2. The lower Court erred in not allowing interest on the whole amount claimed by the respondent, as wrongfully recovered from him by the appellant.

3. The lower Court erred in holding that the orders of the Assistant Collector and the Collector were not ultra vires and illegal in their entirety.

4. The lower Court should have awarded full costs to the respondent.

Judgment.

This is an appeal from the decree passed by the learned Civil Judge, Senior Division, at Bijapur, in Civil suit No. 449 of 1946. The plaintiff, who was a representative Watandar Patil of the village Kotikal in Taluka Badami, brought the present suit against the State of Bombay for a declaration that the order of the Assistant Collector, dated 19-10-1942, fixing the remuneration of his Deputy at Rs. 40/- a year and directing the same to be recovered from him under

Section 81 of the Bombay Hereditary offices Act, was ultra vires and illegal and further for the refund of Rs. 240/- illegally recovered from him in enforcement of that order together with interest thereon amounting to Rs. 30/-. The facts leading to the suit were briefly these. The plaintiff was the holder of the Paragana watan of the Desgat of Wadawadgi comprising several entire villages, Chaverat land cash allowances etc., and so also the sole representative Watandar Patil and Kulkarni of several villages in the Bijapur District. The village of Kotikal in Badami Taluka formed part of this Paragana watan. The plaintiff, as already stated, was a representative Watandar Patil of this village and it was his duty to officiate as such. It appears from the Register of Village Service Watans (Ex. 33) that a cash allowance of Rs. 12/- was attached to this Patilki Watan, but admittedly this grant of cash allowance remained a dead letter since the Government never paid the same either to the representative Patil or to his deputy. It is common ground that the plaintiff never officiated as the Patil of the village Kotikal, though this duty was cast upon him. However, he was permitted by the Collector to appoint a deputy under section 42 of the Bombay Hereditary offices Act One Kallappa, who was a domestic servant of the plaintiff and was maintained by him, was appointed as a deputy to perform the duties of the office of Patil in respect of the said village, and he worked till the year 1940. It appears that the plaintiff did not pay any separate remuneration to Kallappa for working as his deputy. Section 53 of the Bombay Hereditary Offices Act enjoined that a deputy must be a member of the same family as a representative Watandar, whose duty it was to officiate, if there was one ready and willing to serve. Kallappa was not a member of the plaintiff's family. Nevertheless, his appointment as a deputy went unobjected till the year 1940. In that year, one Bhujangappa, who happened to be the bhauband of the

came forward with an application to the Deputy Collector for his appointment as a deputy of the plaintiff. The plaintiff, however, declined to appoint him as his deputy in accordance with section 53 of the Act. So in virtue of the powers vested in him, it was necessary for the Collector to appoint a deputy under Section 49(e) of the Act. The Assistant Collector therefore made an order on 19-7-1940 appointing Bhujangappa as a deputy of the plaintiff. This order appears at page 2 of the File (Ex. 49). Bhujangappa took charge of his office as a deputy on 31-7-1940 (see page 3 of the file Ex. 49). He, however, received no remuneration in this behalf either from the plaintiff or from the Government He, therefore, made an application Ex. 48, dated 12-8-1941, to the Assistant Collector for the purpose. The Assistant Collector forwarded the application to the Mamlatdar for inquiry. The latter in turn forwarded the same to the Circle Inspector for inquiry. When the inquiry was pending before the Circle Inspector, the plaintiff made an application Ex. 28, dated 14-1-1942, contending that he was not personally liable to pay any remuneration to the officiating deputy since no Watan was assigned for the remuneration of the Officiator. On inquiry the Assistant Collector made an order on 19-10-1942 (Ex. 29) fixing Bhujangappa's remuneration at Rs. 40/- a year and directing the same to be recovered from the plaintiff under section 81 of the Bombay Hereditary Offices Act. From this order, the plaintiff preferred an appeal to the Collector who rejected the same summarily (See Ex. 32). Pursuant to the said order of the Assistant Collector, the Government made recovery from the plaintiff comprising four payments. The plaintiff made these payments under protest. The first payment of was Rs. 100/-, dated 10-2-1943. The second was of Rs. 60/-, dated 7-12-1944. The third and the last were of Rs. 40/- each, dated respectively 23-4-1946 and 31-7-1946. The plaintiff,

therefore, filed the present suit against the State of Bombay on 30-9-1946 challenging the validity of the order of the Assistant Collector (Ex. 29) and asking for refund of the amount recovered from him by the Government in enforcement of that order with interest thereon.

2. The State of Bombay put in its written statement at Ex. 8 resisting the plaintiff's suit on various grounds. I would only refer to those grounds which are pressed in this appeal or the cross-objections of the respondent and covered by issues Nos. 3, 6, 7, 8 and 10 framed by the learned trial Judge. By the by, I may mention that the plaintiff's suit was first decreed on 28-1-1949. From that decree the defendant preferred an appeal being Civil Appeal No. 39 of 1949, to the District Court. The appeal came up for hearing before my learned predecessor. He set aside the decree of the trial Court and remanded the suit for a fresh trial after framing the necessary issues in the light of his remarks in the judgment. After remand, fresh issues were framed at Ex. 39.

3. It was contended on behalf of the defendant that the order of the Assistant Collector, dated 19-10-1942, making the plaintiff liable to pay remuneration to Bhujangapa at Rs. 40/- a year was wrong, illegal and ultra vires. Then it was contended that the suit was barred under the third paragraph of section 4(a) of the Bombay Revenue Jurisdiction Act. The defendant further pleaded a bar of limitation, under article 14 to the relief of declaration sought by the plaintiff in regard to the Assistant Collector's order in question. The defendant also contended that the plaintiff's claim in regard to the first two items of Rs. 100/- and Rs.60 dated respectively of 10-2-1943 and 7-12-1944 was barred by limitation under article 16. The last contention of the defendant was that the plaintiff was not entitled to interest on the amount claimed.

4. The learned trial Judge held that the order of the Assistant Collector was not ultra vires in so far as it merely determined Bhujangappa's remuneration. He was, however, entitled to a remuneration at Rs. 35/- only per year. The order was wrong in so far as it fixed his remuneration at Rs.40/ a year. The order was illegal and ultra vires in so far as it directed recovery of the amount of the said remuneration from the plaintiff under section 81 of the Bombay Hereditary offices Act. He further held that there was no bar of section 4(a) of the Bombay Revenue Jurisdiction Act to the suit in regard to that part of the order which was ultra vires. He next came to the conclusion that there was no bar of article 14 of the Limitation Act to the suit in regard to the order which was ultra vires. Then the learned trial Judge found that the first two items of the plaintiff's claim were not in time under article 16 of the Limitation Act. As regards past interest, he observed that the same need not be allowed since it was negligible. The learned trial Judge decreed the plaintiff's suit accordingly. From this decree the defendant Bombay State has come in appeal. The respondent-plaintiff has filed cross-objections in support of the claim dis-allowed by the trial Court, which pertained to the first two items and past interest.

5. The points urged for decision in appeal are:-

1. Whether the Assistant Collector's order, dated ~~10~~-10-1942, making the plaintiff liable to pay remuneration to Bhujangappa at Rs. 40/- a year was wrong, illegal and ultra vires ?

2. Whether the suit is barred under the third paragraph of Section 4(a) of the Bombay Revenue Jurisdiction Act ?

3. Whether the relief of declaration sought by the plaintiff in regard to the Assistant Collector's said order is barred by timeunder article 14 of the Indian Limitation Act ?

4. Whether the claim for the refund of the first two items of Rs. 100/- and Rs. 60/- dated respectively 10-2-1943 and 7-12-1944 is in time having regard to article 16 of the Indian Limitation Act ?

5. Is the plaintiff entitled to past interest ?

My findings are :-

1. The question whether the order fixing the remuneration of Bhujangappa at Rs. 40/- a year is wrong is beyond the jurisdiction of this Court. The order making the plaintiff liable for the remuneration of Bhujangappa is not ultra vires.

2. If the order is held to be ultra vires, the suit is not barred under section 4(a) of the Bombay Revenue Jurisdiction Act.

3. If the order is held to be ultra vires, there can be no bar of article 14 of the Limitation Act to the relief of declaration.

4. The claim with regard to the first two items is not in time having regard to article 16 of the Limitation Act.

5. The plaintiff is not entitled to interest.

7. The appeal involves merely questions of law. The order of the Assistant Collector, which has been challenged by the respondent-plaintiff in this litigation as being ultra vires and illegal, appears at Ex. 29. The same, as pointed out by the learned trial Judge, consists of two parts. Under the first part, the remuneration of Bhujangapa

the Deputy of the plaintiff, is fixed at Rs. 40/-. a year and under the second part the amount of this remuneration f for the period in question has been directed to be recovered from the respondent under Section 81 of the Bombay Hereditary Offices Act. As regards the first part of this order the learned trial Judge held that the Assistant Collector was competent to pass it under paragraph 1 of section 23 of the Bombay Hereditary Offices Act alghough it was wrong regarding the quantum. In the view of the learned trial Judge, this amount ought to have been fixed at Rs.35/- a year instead of Rs. 40/-. Ultimately he found that this part of the order being ultra vires of the powers of the Assistant Collector, the Civil Court had no jurisdiction to consider the correctness or otherwise thereof. The learned pleader for the respondent has questioned this finding, but I find that his contention is not well founded. Section 4(a) of the Bombay Revenue Jurisdiction Act ousts the jurisdiction of a Civil Court in certain matters. One of those matters is contained in paragraph 3 of that section and the same relates to "suits to set aside or avoid any order under the same Act (Bombay Act III of 1874) or any other law relating to the same subject for the time being in force passed by the State Government or any officer duly authorised in that behalf". The suit of the respondent is one to set aside or avoid the order passed by the Assistant Collector. The first part of the order, as rightly pointed out by the learned trial Judge, was within the competence of the Assistant Collector under paragraph 1 of Section 23 of the Bombay Hereditary Offices Act. Therefore, this part of the order cannot be challenged in a Civil Court having regard to the Bar under paragraph 3 of Section 4(a) of the Bombay Revenue Jurisdiction Act.

8. The question of the Validity of the second part of the Assistant Collector's order which makes the

respondent-plaintiff liable for the remuneration of his deputy Bhujangappa forms the principal bone of contention between the parties. The respondent maintained that this part of the order was also ultra vires and illegal and he has succeeded on that score in the trial Court. The finding of the learned trial Judge on the question has been seriously challenged in appeal on behalf of the Government. Before embarking upon the decision of this question, I would like to dispose of the other points of law which would really arise on the assumption that the order of the Assistant Collector making the respondent liable for the remuneration of his deputy is ultra vires.

9. If this part of the order was ultra vires of the powers of the Assistant Collector, the same would not be an order under the Bombay Hereditary Offices Act and, there-fore, there could be no bar to the suit under the afore-said provision of the Bombay Revenue Jurisdiction Act as pointed out by the learned trial Judge relying on the ruling in Maganchand Vs. Vithalrao (I.L.R.37 Bombay 37).

10. Then the question is whether the respondent's suit to avoid the order of the Assistant Collector making him liable to pay remuneration to his deputy is barred under Article 14 of the Limitation Act. Article 14 prescribes a period of one year for a suit to set aside any act or order of an Officer of Government in his Official capacity not other-wise expressly provided for and this period of one year begins to run from the date of the act or order. The order in question is dated 19-10-1942 and the suit was filed more than one year after that. It is, therefore, contended on behalf of Government that the suit is barred under article 14. The learned trial Judge found that the order being ultra vires, it was not necessary to set it aside and so article 14 had no application. According to him, article 120 governed the suit in regard to the relief of declaration in respect of this order. The respondent's learned pleader

has adopted the view of the trial Court. I find myself in accord with this view as the same is fortified by the decision in Patdaya Vs. The Secretary of State for India(I.L.R. 48 Bombay 61) to which the learned trial Judge has referred. That decision clearly shows that article 14 would not govern the present suit in regard to the relief of declaration. That being so, the suit for the relief on the footing that the order in question was ultra vires would be governed by the residuary article 120.

11. Then the question is whether the respondent's claim for refund in respect of the first two items is in time. It is not disputed that the respondent paid thse items under protest. Under article 16 of the Limitation Act, a suit against Government to recover money paid under protest in satisfaction of a claim made by the Revenue Authorities on account of arrears of Revenue or on account of demands recoverable as such arrears is governed by a period of one year which begins to run from the date of payment. The payments in question were made more than one year prior to the institution of the suit. The Government, therefore, contended that the suit in respect of these two items was barred under article 16 and that contention was up-held by the learned trial Judge and I think rightly. The respondent has filed his cross-objectsons in this respect. It is urged on his behalf that article 16 would not apply to cases where the money is illegally recovered. I am unable to accept this view. There are several decided cases against the view propounded by the learned pleader for the respondent. They are referred to in the commentary below article 16 in Mitra's Limitation Act, 7th Adition, valume I, at page 389. Consequently I agree with the finding of the learned trial Judge on the point and hold that the respondent's claim for refund in respect of the first two items is barred by limitation under article 16.

12. Then it must be seen whether the respondent is entitled to past interest on the amount of refund. Government maintained that he was not entitled to the same. Accepting this contention the learned trial Judge negatived the respondent's claim for interest. He disallowed this interest on the ground that the amount there-of was negligible and this finding is questioned by the respondent in his cross-objections. With respect I must say that this was not a proper ground for rejecting the claim for interest however, small the amount may be. In my opinion, the claim for past interest will have to be rejected for another reason, and that is under the Provision of the Interest Act which runs thus:-

> "It is, therefore, hereby enacted that upon all debts or sums certain, payable at a certain time or other--wise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then from the time when demand or payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all ceses in which it is now payable by law."

Obviously the amount in question was not payable by virtue of any writing at a certain time. It would be payable otherwise That being so, it was necessary forthe respondent to make a demand in writing for the interest claimed by the learned pleader for the respondent that no such demand was made. The respondent is, therefore, not entitled to past interest

and his claim in this behalf was rightly disallowed by the learned trial Judge, though for a different reason.

13. This brings me to the main question in this appeal namely whether the order of the Assistant Collector making the respondent liable for the remuneration of his deputy is ultra vires and illegal. The respondent relies xx on two grounds in this connection. The first ground is that this part of the order followed upon its earlier part fixing the remuneration of the respondent's deputy and as the earlier part of the order did not comply with the provision of section 73(1) of the Bombay Hereditary Offices Act, the legality of the latter part which depended upon it must be also deemed to have been affected thereby. It is commong ground that the first part of the order falls under Section 23 Paragraph 1 in Part V of the Bombay Hereditary Offices Act. Section 73 Clause 1 of that Act provides that no order under part V assigning the remuneration of Officiators shall be passed unless after an investigation recorded in writing and a proper opportuhity afforded for the hearing of claims and the production of evidence and that in such investigation, the Collector or other officer shall record his decision with the reasons therefore in his own hand-writing. It was contended by the respondent that the requirements of Section 73(1) of the Act were not fulfilled in the present case in passing the order in question. The learned trial Judge held that Section 73(1) applied only to such orders made under Part V as assigned the remuneration of officiators and that the assignment of the remuneration of Officiators having been governed by the pragraph 2 of section 23, the contention of the respondent in this respect would not prevail. In other words, he opined that Section 73(1) did not apply to cases fixing remuneration of officiators under section 23 paragraph 1. I find myself in agreement with this view. I accordingly negative the first ground urged by the respondent.

14. The other ground is that it was lawful for the Assistant Collector to assign Watan Property or the profits thereof towards the emoluments of the officiators under paragraph 2 of section 23 of the Act. But in the present case there being no Watan property attached to the office of the Patil, it was not competent for the Assistant Collector to make the remuneration payable from the - respondent, and recover the same under section 81 of the Act. The learned trial Judge accepted this ground and found that this part of the order was ultra vires and - illegal. This finding is seriously challenged before me. It was urged by the learned Government Pleader that Section 23 paragraph 1 empowered the Collector or for that matter the Assistant Collector not only to fix the remuneration of an officator but also to direct the payment thereof to the officiator and that this paragraph was quite independent of paragraph 2 of Section 23 which could be resorted to by the Collector, if he was so pleased to do, where Watan property was attached to the office. But where no Watan property was attached to the office, it was open to him to fix the remuneration of the officiator and direct payment thereof. The learned Government Pleader emphasised that this interpretation was in consonance with the spirit of section 81 which directed recovery of emoluments of an officiator even personally from the Watandar as in the case of recovery of land revenue. I entirely accept the argument of the learned Government pleader. He also referred me to the Government Resolution No. 686, dated 20-2-1860, (Ex. 34) which is older than the Act. This Resolution says:-

> 2 The proper payment of village officers is part of the survey system which must be maintained in its entirety. In a wholly alienated village the Inamdar must, therefore, provide for the remuneration of the village officers according to the scale, as he receives the whole of the revenue derived from the village".

In the present case, no doubt we are dealing with an alienated village, in which the respondent is both the Inamdar and also the sole representative Watandar Patil. However, as section 23, which is a later enactment, has not made any such distinction, I think the Government Resolution referred to above is not very much useful. I have, therefore, to differ from the view taken by the learned trial Judge on the point and hold that the order in question is not ultra vires and illegal as maintained by the respondent.

15. In vew of this finding, I must allow the appeal, reverse the decree of the lower Court and dismiss the respondent's suit with costs throughout. The corss-objections also stand dismissed.

Sd/- D. S. Lupane.

July 31, 1953. ASSISTANT JUDGE.

TYPED BY.

SECTIONER.

COMPARED BY.

SECTIONER.

" TRUE COPY "

CLERK OF THE COURT.

Suits
Bijapur
For a declaration that the order of the Assistant Collector directing recovery of Rs.40 from the plaintiff is illegal and for injunction.

Government of Bombay,
Legal Department,
Resolution No. 18386/E
Sachivalaya, Bombay, 20th August 1955.

Read Government Resolution, Legal Department No.7673 dated the 15th May 1951.

Endorsement from the District Government Pleader, Bijapur No.543 dated the 23rd June 1952 stating that the suit noted

In the Court of the Civil Judge (Senior Division), Bijapur.	:	in the margin was decided by the Civil Judge (Senior Division), Bijapur on 20th
Civil Suit No.449 of 1946.	:	
Shivanappa Yalgordappa Desai ... Plaintiff; versus	:	
The Province of Bombay ... Defendant.	:	

June 1952 when the following order was passed:-

" It is declared that the direction contained in the Assistant Collector's order Ex.29 dated 19-10-42 to recover the amount of the Potgi or remuneration payable to the officiating deputy of the Patil from the plaintiff under section 81 of the Bombay Hereditary Officers Act is ultra vires and void.

The deft. and its officers and servants are hereby restrained from recovering any amount from the plaintiff under the aforesaid direction contained in the Assistant Collector's order Ex.29.

The defendant to pay the plaintiff Rs.80/- with interest thereon at 4 per cent per annum from the date of the suit till satisfaction.

The defendant to pay the plaintiff proportionate costs of the suit and bear his own."

Endorsement from the District Government Pleader, No.543, dated the 23rd January 1952 recommending the institution of an appeal.

Resolution:- Sanction is accorded to the institution of an appeal in the Court of the District Judge Bijapur against the decision of Civil Judge (S.D.) Bijapur dated the 20th June 1952 on the lines of the brief accompanying Government Resolution, Legal Department, No.3276 dated the 3rd April 1947.

Submitted for signature
20/8

By order and in the name of the Governor of Bombay,

original
(D.P.Shikhare)
Deputy Secretary to Government.

To
The Revenue Department,
~~The Commissioner, Southern Division~~
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Submitted for signature.
1918 SPN JS 1918
DS(civil)

p/18.8